

No. 10362

---

---

United States 5  
Circuit Court of Appeals  
For the Ninth Circuit.

---

MARIO JOSEPH PACMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

FEB 21 1944

PAUL D. O'BRIEN,

CLERK



No. 10362

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

MARIO JOSEPH PACMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division



# INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

Page

Affidavit and Order for Extension of Time to Settle Bill of Exceptions .....	14
Appeal:	
Certificate of Clerk to Transcript of Rec- ord on .....	18
Notice of .....	8
Order Allowing Release on Bail on .....	9
Order That Certain Exhibits Need Not Be Printed on .....	150
Praecipe .....	17
Stipulation and Order re Exhibits .....	14
Supersedeas Bond .....	10
Assignment of Errors .....	133
Bill of Exceptions .....	28
Argument by Defense Counsel, Excerpts..	105
Argument by Plaintiff's Attorney, Ex- cerpts .....	108
Certificate of Judge to Bill of Exceptions..	121
Exceptions of Defendant to Government's Instructions .....	100, 116, 120

	<b>Index</b>	<b>Page</b>
Exhibits for Defendant:		
A—	Telegram, Sept. 5, 1942, K. H. Leitch to Mario J. Pacman . . . . .	79
C—	Telegram, Sept. 2, 1942, Mario J. Pacman to Selective Service Board No. 228, Los Angeles . . . . .	61
D—	Document on letterhead of Fellowship of Reconciliation, dated Mar. 23, 1942 . . . . .	63
	Document from Chapman College . . . . .	63
	Document from Los Angeles City College, Mar. 23, 1942 . . . . .	64
	Document from Billy Truehart, dated Feb. 2, 1942 . . . . .	66
E—	Letter, Mar. 27, 1942, Mario J. Pacman to Selective Service Board, Los Angeles . . . . .	67
I—	Telegram, Sept. 2, 1942, Mario J. Pacman to Selective Service Board No. 228, Los Angeles . . . . .	76
J—	Telegram, Mario J. Pacman to Major K. A. Leitch . . . . .	78
Q—	Letter, Sept. 22, 1942, M. J. Pacman signed K. H. Leitch . . . . .	103

## Index

Page

## Exhibits for Government:

1—Registration Card .....	30
3—Special Form for Conscientious Objectors, Excerpts .....	32
4—Letter, Mar. 17, 1942, M. J. Pac- man to Local Board No. 228, Los Angeles .....	33
5—Letter, 3/5/42, Mario J. Pacman to Selective Service Board No. 228	34
6—Letter, Apr. 13, 1942, Mario J. Pacman to Selective Service Board, Excerpt .....	35
7—Letter, Apr. 15, 1942, Selective Service Board to Mario J. Pacman	37
8—Letter, Apr. 18, 1942, Mario J. Pacman to Appeal Board No. 17, c/o Selective Service Board No. 228 .....	38
8-A—10 Misc. Letters attached to Ex- hibit 8 .....	40-49, 72-73
9—Order to Report for Induction....	50
10—Notice of Suspected Delinquency, Sept. 14, 1942 .....	53
11—Letter, Sept. 16, 1942, K. H. Leitch, State Director of Selective Service to Mario J. Pacman .....	55

Index	Page
Exhibits for Government—(Continued):	
12—Letter, Sept. 3, 1942, Local Board No. 228 to Mario J. Pacman . . . . .	86
13—Letter, Oct. 2, 1942, Mario J. Pac- man to Dr. Vance H. Finley, Chairman of Local Board No. 228	88
Instructions of Government, Exceptions of Defendant to . . . . .	100, 116, 120
Instructions on Behalf of Plaintiff . . . . .	117
Instructions Requested by Defendant . . . . .	110
Offer of Proof . . . . .	97
Sentence (Feb. 1, 1943) . . . . .	122
Witnesses for Defendant:	
Pacman, Mario Joseph	
—direct . . . . .	74, 75
—recalled, direct . . . . .	81
—cross . . . . .	84, 86
—redirect . . . . .	91, 95
—recross . . . . .	95
—recalled, direct . . . . .	101
Sniff, Mrs. Fannie	
—direct . . . . .	75
—recalled, direct . . . . .	80
Snyder, Enos	
—direct . . . . .	61



## Index

## Page

## Witnesses for Government:

Head, David	
—direct . . . . .	105
Finley, Vance H.	
—direct . . . . .	56
—cross . . . . .	58
Fox, Clyde F.	
—direct . . . . .	29
Sniff, Mrs. Fannie	
—direct . . . . .	29
—cross . . . . .	54
—redirect . . . . .	55
—recross . . . . .	61
—recalled, direct . . . . .	96
—cross . . . . .	97
Snyder, Enos	
—direct . . . . .	58
—cross . . . . .	59
—redirect . . . . .	60
—recross . . . . .	60
Certificate of Clerk to Transcript of Record on Appeal . . . . .	18
Indictment . . . . .	2
Judgment and Commitment . . . . .	6

	Index	Page
Minute Orders:		
Jan. 21, 1943—Arraignment and Plea.....		5
Mar. 10, 1943—Order Extending Time to Settle and File Bill of Exceptions to Apr. 16, 1943 .....		19
Apr. 16, 1943—Order Extending Time to June 1, 1943 .....		21
June 1, 1943—Order Extending Time to June 22, 1943 .....		22
June 21, 1943—Order Extending Time to June 29, 1943 .....		23
June 28, 1943—Order Extending Time to July 7, 1943 .....		25
July 7, 1943—Order Extending Time to July 14, 1943 .....		26
July 14, 1943—Order Extending Time to July 31, 1943 .....		27
Names and Addresses of Attorneys of Record on Appeal .....		1
Notice of Appeal .....		8
Order Allowing Release on Bail on Appeal ....		9

## Index

Page

Order Extending Time to File Bill of Exceptions, etc. to:	
Apr. 16, 1943 .....	19
June 1, 1943 .....	21
June 22, 1943 .....	22
June 29, 1943 .....	23
July 7, 1943 .....	25
July 14, 1943 .....	26
July 31, 1943 .....	27
Order That Certain Exhibits Need Not Be Printed .....	150
Praecipe .....	17
Sentence (Feb. 1, 1943) .....	122
Stipulation and Order re Exhibits .....	14
Stipulation re Extension of Time to File Bill of Exceptions, etc. ....	16
Supersedeas Bond .....	10
Verdict of the Jury .....	6



## NAMES AND ADDRESSES OF ATTORNEYS

### For Appellant:

DAVID R. RUBIN and  
LELAND S. BOWER

820 A. G. Bartlett Bldg.  
215 W. 7th St.  
Los Angeles, Calif.

### For Appellee:

CHARLES H. CARR, United States Attorney  
MILDRED L. KLUCKHOHN, Assistant  
United States Attorney

600 U. S. Post Office and Court House Bldg.  
Los Angeles, Calif. [1\*]

No. 15789

Filed 1-13-43

## INDICTMENT

Viol.: United States Code, Appendix, Title 50,  
Section 311.

In the District Court of the United States in and  
for the Southern District of California, Central  
Division

September, 1942, Term

In the Name and by the Authority of the United  
States of America, the Grand Jury for the Southern  
District of California, at Los Angeles, presents on  
oath in open court:

That

**MARIO JOSEPH PACMAN,**

hereinafter called the defendant, is a male person  
within the class made subject to selective service  
under the Selective Service Act of 1940, as amended;  
that pursuant to said Act and the rules and regula-  
tions promulgated thereunder, defendant duly and  
regularly registered with Local Board No. 228, said  
board being then and there duly created and acting  
under the Selective Service System established by  
said Act in the County of Los Angeles, State of  
California, in the division and district aforesaid;  
that pursuant to the terms and provisions of said  
Act, and the rules and regulations promulgated  
thereunder, the said defendant was classified by  
said local board in Class 1-AO and was subsequently  
notified of said classification by said board and a

notice and order by said board was thereafter duly given to said defendant to report for induction into the armed forces of the United States of America on September 14, 1942, at Los Angeles, California, within the district and division aforesaid; that said defendant did at said time and place knowingly, wilfully, unlawfully, and feloniously fail and neglect to perform a duty required of him under said Act, and the rules and regulations promulgated thereunder, that is to say the defendant did then and there knowingly, wilfully, unlawfully and feloniously fail to report for induction into the armed forces of the United States as so notified and ordered to do;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

LEO V. SILVERSTEIN

United States Attorney [2]

No. 15789

United States District Court, Southern District of  
California, Central Division.

The United States of America

vs.

Mario Joseph Pacman

Indictment

(Viol.: 50 U.S.C. 311 App.)

A true bill,

ROY D. BAYLY,  
Foreman.

Filed in open court this . . . . day of . . . . .  
A.D. 19. .

---

 Clerk.

Bail \$3500.00

[Endorsed]: Filed Jan. 13, 1943. [3]



At a stated term, to wit: The September Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 21st day of January in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: J. F. T. O'Connor, District Judge.

No. 15,789-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARIO JOSEPH PACMAN,

Defendant.

PLEA OF NOT GUILTY

This cause coming on for arraignment and plea of the defendant Mario Joseph Pacman; R. F. Duni, Esq., Assistant U. S. Attorney, appearing for the Government; A. L. Wirin, Esq., appearing as counsel for the defendant; Virginia Pickering, Court Reporter, being present and reporting the proceedings; the defendant, being present in Court, now states his true name to be as charged in the indictment; waives the reading of the indictment, and enters plea of not guilty to the charges contained in the indictment.

It is ordered that this cause be, and it hereby is, set for trial for January 27, 1943.

31/621 [4]

---

[Title of District Court and Cause.]

VERDICT OF THE JURY

We, the jury in the above entitled case, find the defendant, Mario Joseph Pacman, guilty as charged in the Indictment.

Dated: Los Angeles, Calif., January 29, 1943.

GUY L. CUZNER

Foreman of the Jury

[Endorsed]: Filed Jan. 29, 1943. [5]

---

District Court of the United States, Southern  
District California Central Division.

UNITED STATES

vs.

MARIO JOSEPH PACMAN

No. 15789 Criminal Indictment in one count for violation of U. S. C., Title 50, Sec. 311, Unlawfully failing to report for induction, etc.

JUDGMENT AND COMMITMENT

On this first day of February, 1943, came the United States Attorney, and the defendant Mario

Joseph Pacman appearing in proper person, and with his attorney A. L. Wirin and,

The defendant having been convicted on verdict of jury of guilty of the offense charged in the Indictment in the above-entitled cause, to wit

Knowingly, wilfully, unlawfully and feloniously failing and neglecting to report for induction into the armed forces of the United States at Los Angeles, California, on September 14th, 1942.

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the Penitentiary type to be designated by the Attorney General or his authorized representative for the period of two (2) years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer

and that the same shall serve as the commitment herein.

(Signed) J. F. T. O'CONNOR

United States District Judge.

[Endorsed]: Filed this first day of February, 1943. (Signed) Edmund L. Smith, Clerk. By Francis E. Cross, Deputy Clerk. [6]

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and address of Appellant: Mario J. Pacman, 1100 South Flower Street, Los Angeles, California.

Name and address of Appellant's attorney: A. L. Wirin, 257 South Spring Street, Los Angeles, California.

Offense: Violation of Selective Training and Service Act of 1940.

Date of Order and Judgment: February 1, 1943.

Brief description of judgment or sentence: Confinement in penitentiary for 2 years.

Name of prison where now confined: Los Angeles County Jail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Dated: February 5, 1943.

MARIO J. PACMAN

Appellant.

GROUNDS OF APPEAL:

1—The Court erred in refusing to grant defendant's requested instructions as excepted to. [7]

2—The Court erred in giving instructions submitted by the prosecution as excepted to by defendant.

3—The Court erred in ruling upon evidence and rejection of proffered exhibits by defendant and rejecting defendant's offers of proof, as excepted to by defendant.

4—The evidence was insufficient to justify a conviction.

A. L. WIRIN

Attorney for Appellant.

[Endorsed]: Filed Feb. 5, 1943. [8]

---

[Title of District Court and Cause.]

ORDER ALLOWING RELEASE ON BAIL,  
ON APPEAL

The defendant having filed a notice of appeal to the Ninth Circuit Court of Appeals, and good cause appearing therefor, it is hereby ordered that the defendant may be released upon bail, on appeal, in the sum of \$3,500.00.

Dated: At Los Angeles, this 8th day of February, 1943.

J. F. T. O'CONNOR

United States District Judge.

[Endorsed]: Filed Feb. 8, 1943. [9]

---

[Title of District Court and Cause.]

### SUPERSEDEAS BOND

Know All Men by These Presents:

That we, Mario J. Pacman, as *principle*, and Pasquale Antonio Di Clemente and Marie Di Clemente, as sureties and sole owners of the five One Thousand Dollar United States Savings Bonds, Series E, Nos. M3414082 E, M3414083 E, M3414084 E, M3414085 E, and M3414086 E, which said bonds have been deposited with Edmond L. Smith, Clerk of the United States District Court as surety, in lieu of Thirty Five Hundred and no/100 Dollars (\$3,500.00) cash bail, are jointly and severally held and firmly bound unto the United States of America for the payment of which said sum, we and each of us, bind ourselves, our heirs, executors, administrators, and assigns.

The condition of the foregoing obligation is as follows:

Whereas, lately, to wit, on the 1st day of February, 1943, at a term of the District Court of the United States, in and for the Southern District of

California, Central Division, in an action pending in the said court in which the United States of America was plaintiff and Mario J. Pacman was defendant, a judgment and sentence was made, given, rendered, and entered against the said Mario J. Pacman, in the above-entitled action, wherein he was [10] convicted as charged of violation of Selective Training and Service Act of 1940.

Whereas, in said judgment and sentence so made, given, rendered and entered against said Mario J. Pacman, he was by said judgment sentenced to confinement in the penitentiary for two years.

Whereas, the said Mario J. Pacman has filed a notice of appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the 9th Circuit; and

Now, Therefore, the conditions of this obligation are such that if said Mario J. Pacman shall appear in person or by his attorney in the United States Circuit Court of Appeals for the 9th Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his appeal; and if the said Mario J. Pacman shall abide by and obey the orders made by the said United States Circuit Court of Appeals for the 9th Circuit, and if the said Mario J. Pacman shall surrender himself in execution of said judgment and sentence; if the judgment and sentence be affirmed by the said United States Circuit Court of Appeals for the 9th Circuit; and if the said Mario J. Pacman will appear for trial in the District Court of the United

States in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court, if the said judgment and sentence against him be reversed.

Then this obligation shall be null and void, and the money returned to the said Pasquale Antonio Di Clemente and Marie Di Clemente, otherwise to remain in full force and effect.

MARIO J. PACMAN

Principal

Subscribed and sworn to before me this 11th day of February, 1943.

[Seal] HELEN WIRIN

Notary Public in and for the County of Los Angeles, State of California. [11]

PASQUALE ANTONIO DI  
CLEMENTE

Surety.

MARIE DI CLEMENTE

Surety.

Subscribed and sworn to before me this 12th day of February, 1943.

[Seal] HELEN WIRIN

Notary Public in and for County of Los Angeles, State of California.

Examined and recommended for approval as provided in Rule 13.

LEO V. SILVERSTEIN,

United States Attorney;



I hereby certify that I have examined the within surety and find it good and sufficient.

PAUL J. McCORMICK

United States District Judge.

Dated: at Los Angeles, February 12th, 1943.

[Endorsed]: Filed Feb. 12, 1943. [12]

---

[Title of District Court and Cause.]

WAIVER BY BONDSMEN

The undersigned, the sole owners of the following five One Thousand Dollar United States Savings Bonds, Series E, Nos. M3414082 E, M3414083 E, M3414084 E, M3414085 E, and M3414086 E, which said bonds are being deposited concurrently herewith, with Edmond L. Smith, Clerk of the United States District Court, pursuant to that supersedeas bond executed by the undersigned this 12th day of February;

Hereby waive all right, title and interest in and to said bonds.

Dated: at Los Angeles this 12th day of February.

MARIE DI CLEMENTE

PASQUALE ANTONIO DI  
CLEMENTE

Subscribed and sworn to before me this 12th day of February, 1943.

[Seal] HELEN WIRIN

Notary Public in and for County of Los Angeles,  
State of California.

[Endorsed]: Filed Feb. 12, 1943. [13]

[Title of District Court and Cause.]

STIPULATION IN RE EXHIBITS

It Is Hereby Stipulated by and between the respective counsel that all exhibits introduced at the trial of said cause, shall, by the clerk, be transmitted and certified to the Circuit Court of Appeals.

Dated at Los Angeles, California, June 29, 1943.

CHAS. H. CARR

United States Attorney

By MILDRED L. KLUCKHOHN

Assistant U. S. Attorney

Attorneys for Appellee

LELAND S. BOWER

DAVID R. RUBIN

By DAVID R. RUBIN

Attorneys for Appellant

It Is so Ordered:

J. F. T. O'CONNOR

Judge

[Endorsed]: Filed June 30, 1943. [14]



[Title of District Court and Cause.]

AFFIDAVIT AND ORDER FOR  
EXTENSION OF TIME

County of Los Angeles

State of California—ss.

A. L. Wirin, being first duly sworn, deposes and says that:

He is attorney for the appellant in the above entitled action.

On February 5, 1943, the defendant filed his notice of appeal from the judgment in the above cause.

March 5th, 1943, is the end of the thirty-day period within which the Bill of Exceptions and Assignment of Errors, referred to in Rule IX of the Rules of Practice and Procedure in Criminal Cases, can be settled and filed.

The defendant has encountered difficulty in raising sufficient funds to pay the court reporter for a reporter's transcript of the evidence adduced at the trial, said transcript being necessary in order for the defendant adequately to prepare a Bill of Exceptions; the defendant has, however, raised sufficient funds to deposit with the court reporter, and said transcript has been ordered. [15]

In addition, the affiant has lost the services of his associate, Fred Okrand, who has joined the armed forces of the United States. Accordingly, the affiant, as counsel for the defendant, has been delayed in preparing a Bill of Exceptions because of the pressure of work upon him. Application is made accordingly for an extension of time within which to prepare said Bill of Exceptions; said application is made pursuant to the provisions of Rule IX of said rules, extending the time within which said appellant may procure to be settled and filed his Bill of Exceptions and to file his assignment of errors.

A. L. WIRIN

Subscribed and sworn to before me this 1st day of March, 1943.

[Seal]

HELEN WIRIN

Notary Public in and for said  
County and State.

### ORDER

Good cause appearing therefor, it is hereby ordered that the appellant in the above entitled action may have through and including the 16 day of March, 1943, within which to procure to be settled and to file his Bill of Exceptions and in which to file his assignment of errors.

Dated: This 1st day of March, 1943.

J. F. T. O'CONNOR

Judge of the District Court.

See my remarks transcript in file which clearly show this defendant has procrastinated and secured delay after delay to avoid complying with induction order. There must be an end to delay.

J. F. T. O'CONNOR

Judge. [16]

---

[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between counsel for the defendant Mario J. Paeman and counsel for plaintiff United States of America, that the defendant in the above entitled action may

have to and including the 5th day of May, 1943, within which to procure to be settled and file his Bill of Exceptions and in which to file his Assignments of Errors.

A. L. WIRIN

Attorney for Defendant.

LEO V. SILVERSTEIN,

United States Attorney

JAMES L. CRAWFORD

Assistant United States At-  
torney

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 2, 1943. [17]

---

[Title of District Court and Cause.]

PRAECIPE

To Edmund L. Smith, Clerk of the United States District Court, and Charles H. Carr, Esq., United States Attorney:

The defendant in the above entitled action, Mario Joseph Pacman, designates parts of the record in the above entitled action to be certified to the United States Circuit Court of Appeals for the Ninth District as follows:

1. Indictment.
2. Arraignment.

3. Plea of defendant.
4. Verdict of the jury.
5. Judgment of the Court.
6. Defendant's Bill of Exceptions.
7. Defendant's Assignment of Errors.
8. Bail pending Appeal.
9. Stipulation and Order for transmission of original Exhibits.

DAVID R. RUBIN and LELAND S. BOWER

By: LELAND S. BOWER

Attorneys for Defendant and Appellant. [18]

Received copy this 10 day of August, 1943.

CHARLES H. CARR,

United States Attorney

By: MILDRED L. KLUCKHOHN

Assistant United States Attorney for Plaintiff and Appellee.

[Endorsed]: Filed Aug. 10, 1943. [19]

---

[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 19 inclusive contain full, true and correct copies of: Indictment; Minute Order Entered January 21, 1943; Verdict of the

Jury; Judgment and Commitment; Notice of Appeal; Order Allowing Release on Bail on Appeal; Supersedeas Bond; Stipulation and Order in re Exhibits; Affidavit and Order Extending Time to Settle Bill of Exceptions and Praecipe, which, together with the Original Assignment of Errors, Original Bill of Exceptions and Original Exhibits transmitted herewith constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to \$6.05 which amount has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 13 day of August, 1943.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk.

---

At a Stated Term, to wit: The October Term A. D. 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of Los Angeles, in the State of California, on Wednesday the tenth day

of March in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable William Denman, Circuit Judge, Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable Albert Lee Stephens, Circuit Judge.

No. 10,362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS

Pursuant to stipulation, this day filed, and good cause therefor appearing, it is Ordered that the time to settle and file Bill of Exceptions in the above-entitled cause be, and hereby is extended to and including April 16, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of Los Angeles, in the State of California, this 10th day of March, 1943.

[Seal] PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the  
Ninth Circuit

[Endorsed]: Filed Mar. 11, 1943. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.



At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday, the sixteenth day of April in the year of our Lord one thousand nine hundred and forty three.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable William Denman, Circuit Judge,

Honorable Clifton Mathews, Circuit Judge.

No. 10362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS, ETC.

Upon consideration of the application of Mr. A. L. Wirin, counsel for appellant, and good cause therefor appearing, It Is Ordered that the time within which appellant may file his assignments, and have settled and file his bill of exceptions in this cause be, and hereby is extended to and including June 1, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at

the City of San Francisco, in the State of California, this 16th day of April, 1943.

[Seal] PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit

By FRANK H. SCHMID

Deputy Clerk

[Endorsed]: Filed Apr. 19, 1943. Edmund L. Smith, Clerk. By Theodore Hocke, Deputy Clerk.

---

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the first day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable Francis Garrecht, Circuit Judge,

Honorable William Healy, Circuit Judge.

No. 10362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS, ETC.

Upon consideration of the application of Mr. David R. Rubin, counsel for appellant, and stipula-

tion of the United States Attorney thereto, and good cause therefor appearing, It Is Ordered that the time within which appellant may file his assignments of error, and have settled and filed his bill of exceptions in this cause be, and hereby is extended to and including June 22, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 1st day of June, 1943.

[Seal]                      PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit

[Endorsed]: Filed Jun. 2, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

---

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-

first day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,  
Presiding,

Honorable William Denman, Circuit Judge,

Honorable William Healy, Circuit Judge.

No. 10362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS, ETC.

Upon consideration of the application of Mr. David R. Rubin, counsel for appellant, counsel for appellee consenting thereto, and good cause therefor appearing, it is Ordered that the time within which appellant may file his assignments, and have settled and file his bill of exceptions in this cause be, and hereby is extended to and including June 29, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of June, 1943.

[Seal]                      PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth  
Circuit

[Endorsed]: Filed Jun. 23, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-eighth day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,  
Presiding,

Honorable William Denman, Circuit Judge,

Honorable William Healy, Circuit Judge.

No. 10362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS, ETC.

Upon consideration of the application of Mr. David R. Rubin, counsel for appellant, and good cause therefor appearing, It Is Ordered that the time within which appellant may file his assignments of error, and have settled and filed his bill of exceptions in this cause be, and hereby is extended to and including July 7, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at

the City of San Francisco, in the State of California, this 28th day of June, 1943.

[Seal]                      PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth  
Circuit

[Endorsed]: Filed Jun. 30, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

---

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Wednesday the seventh day of July in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,  
Presiding,

Honorable William Healy, Circuit Judge.

No. 10362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS, ETC.

Upon consideration of the application of Mildred L. Kluckhohn, Assistant United States Attorney, counsel for appellee, and her affidavit in support thereof, and stipulation of counsel for respective parties, and good cause therefor appearing, It Is

Ordered that the time within which the bill of exceptions may be settled and filed in this cause be, and hereby is extended to and including July 14, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 8th day of July, 1943.

[Seal]

PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit

[Endorsed]: Filed Jul. 9, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

---

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Wednesday the fourteenth day of July in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,  
Presiding,

Honorable Clifton Mathews, Circuit Judge.

No. 10362

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE  
AND FILE BILL OF EXCEPTIONS

Upon consideration of the application of Mr. Leland S. Bower, counsel for appellant, and his supporting affidavit, and stipulation of counsel for appellee, and good cause therefor appearing, It Is Ordered that the time within which the bill of exceptions in this cause may be settled and filed be, and hereby is extended to and including July 31, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 14th day of July, 1943.

[Seal] PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Jul. 15, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

[Title of District Court and Cause.]

## BILL OF EXCEPTIONS

Be it remembered that on the 27th day of January, 1943, at the January term of the District



Court of the United States for the Southern District of California, Central Division, the above entitled cause came on for trial. Leo V. Silverstein, United States Attorney, and Miss Mildred L. Kluckhohn, Assistant United States Attorney, appearing for plaintiff, and A. L. Wirin, Esq., appearing for the defendant. Thereupon a jury was impanelled and sworn and the trial commenced on said 27th day of January, 1943.

Whereupon plaintiff, to sustain the issue on its part, called

CLYDE F. FOX,

as a witness on its behalf, who, upon direct examination testified as follows: That he was secretary of Local Draft Board No. 228, at 5106 Fountain Avenue, Los Angeles, California.

It was stipulated that this Board was duly organized and created under the Selective Training and Service Act and covered 4345 Normal Avenue; and that the Board was composed [1\*] of the following: Dr. Vance Finley, Chairman; John Stephens; and Mr. Clyde Fox, Secretary.

---

MRS. FANNIE SNIFF,

a witness called by the plaintiff, testified as follows: That she has known Mario Joseph Paeman since March 1, 1942, when he came before the board for a hearing; that she was the chief clerk of Local Board

---

\*Page numbering appearing at foot of page of Bill of Exceptions.

(Testimony of Mrs. Fannie Sniff.)

228; that she started working for the Board as assistant clerk on November 1, 1940, and was promoted to chief clerk in July 1942; that her duties as such included mailing out classifications and questionnaires, opening the mail, taking care of everything in general, all clerical work, as well as attending all of the meetings of the Board. She testified further that the chairman of the Board, Dr. Vance H. Finley, is responsible for all the files and correspondence relating to registrants in Local Board 228, and she is chief clerk and custodian of the files; that the defendant, Mario Joseph Pacman, registered under the Selective Training and Service Act of 1940 on October 16, 1940, at Precinct 1295, of which Bertha Bennett was the registrar; that he gave his address as 4345 Normal Avenue and that address is within the territory jurisdiction of Local Board 228.

Thereupon, the plaintiff introduced in evidence a registration card, marked "Plaintiff's Exhibit I", which read as follows: "Serial No. 217. Name: Mario Joseph Pacman. Order No. 589. Address: 4345 Normal, Los Angeles, Los Angeles County, California. Age: 33 years. Place of birth: [2] Italy. Country of citizenship: United States of America."

This witness, Mrs. Fannie Sniff, testified further that on the 20th day of December, 1940, there was mailed to the defendant a Selective Service questionnaire which was returned to the Board and filed with the Board on December 26, 1940, signed

(Testimony of Mrs. Fannie Sniff.)

by the registrant; that the defendant in said questionnaire stated that he resided at 4345 Normal Avenue; that he was a United States citizen, single, age 33, (birth date July 13, 1907) and did not claim any dependency.

Thereupon the plaintiff introduced in evidence Selective Service questionnaire of Mario Joseph Pacman, marked "Government's Exhibit 2."

Witness testified that the defendant claimed an exception to combatant military service, but did not claim an exemption to non-combatant military service; that he stated in his questionnaire he doubted his ability to withstand physical strain, but with a few months of notice (so that he could liquidate his business) he thought he would like the service; that he is a good driver, seller, economist, and a better buyer; that the back of the questionnaire contains the minutes of action, his classification and whatever action might have been taken by the Board of Appeals, the entries having been made by the Chairman or members of the Board at the time the meeting was had; that the minutes show that the defendant was first classified on January 6, 1941, and was placed in 1-D as a student; that on July 8, 1941, he [3] was reclassified 1-H because of over-age (28); that when he received his first 1-A classification on June 25, 1941; that he received his first physical examination prior to June 25, 1941, and he was given another physical on January 15, 1942, after he had his 1-A; that on the 28th of January, 1942, he signed, and on January 30, 1942, he filed a con-

(Testimony of Mrs. Fannie Sniff.)  
scientious objector's form, D.S.S. Form 47 approximately 13 months after filing his Selective Service questionnaire.

Thereupon, the plaintiff introduced in evidence the special form for conscientious objectors of Mario Joseph Pacman, marked "Government's Exhibit 3", which read as follows: "I claim the exemption provided by the Selective Training and Service Act of 1940 for conscientious objectors, because I am conscientiously opposed by reason of my religious training and belief to participation in war in any form and to participation in Combatant Military Service or training therefor; but I am willing to participate in non-combatant service or training therefor under the direction of military authorities."

At this point there was read to the jury the following questions and answers from said questionnaire, conscientious objector Form No. 47:

"Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

"California State Guard; Bishop, California; became [4] a member because I was asked, I may resign at will, and its object is only to guard property, help those in disaster, and guide people to safety. However, I would be asked if I could do it, and I may refrain or resign at will."

That on March 13, 1942, the defendant was reclassified to 1-A and a notice of this classification

(Testimony of Mrs. Fannie Sniff.)

was mailed to him on March 13, 1942, the same day; that on March 17, 1942, the defendant requested, by letter, an appearance before the Board in regard to his classification.

Thereupon, the plaintiff introduced in evidence, a letter addressed to Local Board 228, under date of March 17, 1942, from defendant, Mario Joseph Pacman, marked "Government's Exhibit No. 4," which was read to the jury as follows:

"Local Board No. 228  
5106 Fountain Ave.,  
Los Angeles, Calif.

Gentlemen:

May I request that I be permitted to appear before you with my reasons pertaining to a change in classification?

I am requesting a leave so that I may appear there this coming week, and will appreciate you notifying me when to appear.

Cooperatively yours,

(Signed)

M. J. PACMAN,

Mario Joseph Pacman

Order #589." [5]

---

Witness further testified that on March 24, 1942, defendant appeared before the Board; that she and two of the three members of the Board being present, the third, Mr. Fox, being absent, that after being given an opportunity to discuss his case and

(Testimony of Mrs. Fannie Sniff.)

after talking to the members of the Board on various different things and the Board members discussed it with him, he requested classification of 1-A-O and the same was granted; that prior to this time he had expressed his willingness to enter non-combatant military service in Form 47, his Selective Service questionnaire and several letters, one under date March 5, 1942.

Thereupon, the plaintiff introduced in evidence, a letter addressed to the Board, under date of March 5, 1942, from defendant, marked "Government's Exhibit No. 5", which read as follows:

"124 So. Main St.  
Bishop, Calif.  
3-5-42.

"Selective Service Board #228  
5106 Fountain Ave.,  
Los Angeles, California

Gentlemen:

If the United States should need me for greater service, I am available for any constructive or non-destructive work on the continent which does not conflict or oppose my [6] inherent economic, social, and religious beliefs.

"Should this come to pass, will you please do your best to arrange that I receive a notice of thirty or more days? I ask this because I am the only employee representing the California Department of Employment (1025 P St., Sacramento) at Bishop, Calif. office of the U. S. Employment Service, and

(Testimony of Mrs. Fannie Sniff.)

because I personally should be permitted enough time to liquidate, etc.

“Will you kindly answer this letter at your early convenience?”

“Cooperatively yours,

(Signed)

MARIO J. PACMAN

Mario J. Pacman

Order No. 589.”

---

Witness further testified that on March 26, 1942, he was mailed a D.S.S. Form 57 notifying him of his 1-A-O classification; that on April 15 the Board received a letter from defendant asking for reclassification.

Thereupon, the plaintiff introduced in evidence, a letter dated April 13, 1942, directed to the Board, and asking for reclassification, marked “Government’s Exhibit 6”, a portion of which was read to the jury as follows:

“Since being classified 1-A-o, I have heard from a dozen sources that 1-A-o draftees [7] are constantly goaded to change their mind, and that they take an unqualified oath to obey any command. If this is not true, I will appreciate a letter from ‘the power that commands, assuring me that I shall not be required to certify, state or swear to do that which I do as destructive, and that I will not be requested or commanded to do that which to me is destructive; I respect the honest sincerity of my

(Testimony of Mrs. Fannie Sniff.)

local draft board members, but I have a right to doubt that they are all aware of all the true facts.

“If this authentic assurance is not given me, I think it pertinent that I herewith inform the authorities that I cannot take such an oath, nor obey such commands. I wish to be of service in any constructive service of national or international importance, but if you will not accept this offer, I wish the opportunity to be left alone to pursue acts which will benefit the people, and not bother my conscience.”

Witness testified that the Board construed Government's Exhibit 6 as a request for reclassification and reconsideration of 4-E a conscientious objector to both combatant and non-combatant military service; that up to this time he [8] wanted exemption from combatant service only but now wanted exemption from non-combatant service also, and it was rejected and defendant notified thereof, by letter dated April 15, 1942, which was introduced as “Government's Exhibit 7.”



(Testimony of Mrs. Fannie Sniff.)

GOVERNMENT'S EXHIBIT No. 7

[Stamped]: Local Board No. 228 91 Los Angeles County 037 Apr 15 1942 228 5106 Fountain Avenue Los Angeles, California

April 15, 1942

Mr. Mario J. Pacman,  
2260 Torrance Blvd.,  
Torrance, California.

Dear Sir:

This will acknowledge your letter of April 13, 1942.

This letter is construed by this Local Board as a request for reclassification from a 1-A-O, an objector to Combatant duty only, to a 4-E, an objector to both Combatant and non-Combatant duty. Although your period of ten days for appeal has elapsed, the Members of this Local Board are recognizing your request. It has this day been considered and rejected. You now have the right of appeal to the Board of Appeal. You may make this appeal by simply directing a letter to the Appeal Board No. 17, appealing your 1-A-O classification, mailed direct to Local Board No. 228, 5106 Fountain Ave., Los Angeles. This appeal must reach this Local Board not later than April 20, 1942. Your

(Testimony of Mrs. Fannie Sniff.)

complete files will then be forwarded to the Appeal Board for consideration.

Yours very truly,  
Local Board No. 228

---

Chairman.

VHF/FS

[Endorsed]: Filed 1/27/1943.

---

Under date of April 18, 1942, defendant requested an appeal; same was received by the Board on April 20. This letter was introduced as "Government's Exhibit 8".

Witness testified that there was attached to Government's Exhibit 8" certain other documents, marked "Government's Exhibit 8-A", which were also received in evidence. (This exhibit consists of 10 misc. letters."

GOVERNMENT'S EXHIBIT No. 8  
2260 Torrance Blvd.  
Torrance, Calif.  
April 18, 1942

Appeal Board No. 17  
C/O Local Board No. 228  
5106 Fountain Ave.  
Los Angeles, Calif.

Genelemen:

If the full authentic assurance stated in my letter of 4/13/42 is not given me, I entreat you to please

(Testimony of Mrs. Fannie Sniff.)

consider this my appeal from 1-A-O to 4-E Classification, or another classification which authentically assures me the peace of mind, conscience, and nerves, and yet makes me more valuable to mankind.

I have given much sane and rational thought to the factors involved in each of my sentences in my letters of 4/13/42, 3/27/42, and Form DSS47 directed to Local Board No. 228, at 5106 Fountain Ave., Los Angeles, California; and since they are of my own construction, full denotation (meaning) and usual connotation (implication) should be given them because they contain the demarcation line beyond which I am certain that I cannot act, even if goaded and prodded to the end, and they contain the maximum of sincerity and truth.

Should you wish to be bothered with additional evidence, etc., I will oblige.

Yours very sincerely,

MARIO J. M. PACMAN

Mario J. M. Pacman

P. S. My present constructive work is of much material benefit to needed production, but the organization policy prohibits deferment requests.

[In ink]: 10 misc letters attached.

[Stamped]: Local Board No. 228 91 Los Angeles County 037 Apr 20 1942 228 5106 Fountain Avenue Los Angeles, California

[Endorsed]: Filed 1/27/1943.

(Testimony of Mrs. Fannie Sniff.)

GOVERNMENT'S EXHIBIT No. 8-A

These 10 pages are only attached as some evidence to refute the possible supposition that personal safety may be my motive or ultimate objective.

1. F.B.I. service is not safe or easy, but its objective is civilian law enforcement, and I have always admired it because it never molests anyone until it is certain he is guilty, and it can be proved. All FBI investigators do not carry guns.
2. The others are interested in construction (not destruction) in Alaska and other dangerous locations.
3. I had to resign the State Guard as soon as I found their duties ~~XXXXXX~~ differed from what I had understood them to be. It was several weeks after I joined that this resignation occurred because of this misunderstanding.

721 No. Hoover Street  
Los Angeles, California  
March 28, 1942

Personnel Manager Federal Bureau of Investigation  
tion

Washington, D. C.

Gentlemen:

During the spring of 1941, I took an examination at your office. Since I do not know if I passed it, I will appreciate information as to the probability of an assignment which aims to disclose those willfully

(Testimony of Mrs. Fannie Sniff.)

guilty of destruction, or those who willfully plan to destruct or disrupt. Remuneration will be a minor factor in any just and constructive assignment.

My finances would permit me to come to Washington and maintain myself during training period.

Cooperatively yours,

M. J. PACMAN

Mario J. Pacman

---

Federal Bureau of Investigation  
United States Department of Justice  
510 South Spring Street, Room 900  
Los Angeles, California  
March 21, 1942

Mr. Mario J. Pacman  
606 South Bonnie Brae  
Los Angeles, California

Dear Mr. Pacman:

This will acknowledge and thank you for your letter of March 18, 1942.

I am sorry that there are no positions in this Bureau as the one to which you refer and at the present time it is not possible to employ as investigators any other than duly appointed Special Agents.

Very truly yours,

R. B. HOOD

R. B. Hood

Special Agent in Charge

(Testimony of Mrs. Fannie Sniff.)

124 So. Main St.  
Bishop, Calif.  
3-18-42

Fed. Bu. of Investigation  
510 So. Spring  
Los Angeles, Calif.

Gentlemen:

During the spring of 1941, I took an examination at your office. Since I do not know if I passed it, I will appreciate information as to the probability of an assignment which aims to disclose those willfully guilty of destruction, or those who willfully plan to destruct or disrupt. Remuneration will be a minor factor in any just and constructive assignment.

If your answer is delayed so that it would not be received on the 21st, will you please address it to 606 So. Bonnie Brae, L.A., Calif. I plan to come there this week end.

Cooperatively yours,

M. J. PACMAN

Mario J. Pacman

(Testimony of Mrs. Fannie Sniff.)

John Edgar Hoover

cc-163

Director

[Cut]

Federal Bureau of Investigation  
United States Department of Justice  
Washington, D. C.  
April 7, 1942

Mr. Mario J. Pacman  
721 North Hoover Street  
Los Angeles, California

Dear Mr. Pacman:

Receipt is acknowledged of your communication of recent date in which you inquire relative to the status of your application on file for appointment to a position in the Federal Bureau of Investigation.

You are advised that your application is being retained on file for consideration in the event it is possible to utilize your services at some future date.

Sincerely yours,

J. E. HOOVER,

John Edgar Hoover

[cut]

Director

(Testimony of Mrs. Fannie Sniff.)

[Letterhead of]

Siems-Spokane Company

Johnson, Drake & Piper, Inc.

Puget Sound Bridge & Dredging Co.

2920-16th Avenue Southwest

Seattle, Wash.

April 6, 1942

Mr. M. J. Pacman

721 No. Hoover St.

Los Angeles, California

Dear Sir:

This will acknowledge receipt of your letter of recent date.

Wish to advise that we have no position open for a man of your qualifications at the present time. However, we enclose an application blank, which we would like to have you fill out and return to this office for future reference.

Very truly yours

Personnel Director

H. Nollan-cc

---

March 29, 1942

Siems Drake & Puget Sound Co.

Seattle,

Washington

Gentlemen:

To help correct your latest difficulty, could you be interested in engaging the services of a Social Science major graduated from the Los Angeles City



(Testimony of Mrs. Fannie Sniff.)

College June, 1941. This 175 pounds 5'8" aggressive 34 year old Citizen genuinely enjoys any overalls or white-collar duty which aims to expedite efficiency and general welfare. He speaks Italian, is familiar with Commercial Law, The Calif. Penal Code, The Calif. Vehicle Code, and has a good 18 year driving record. Although yet unmarried, his dependability, economy, and logical thinking are honestly above par; and his references plus your observations will assure you of his other valuable qualities

During the past five years (until May, 1941), he has worked nights as an inspector & investigator while attending school during the daytime pursuing Liberal Arts. During the previous two years, he exhausted his past savings by starting in the Elementary Sixth Grade and going through high school; and during the preceding thirteen years, he worked his way through "The Street College of hard knocks" by successfully working as inspector & investigator, entrepreneur, organizer, salesman-manager, crew manager, traveling salesman, driver, factory worker, construction worker, coal-miner, and farmer.

If you can think of any difficult and worthy objective he may pursue or learn to pursue anywhere, may this humble but healthy white man call for an interview at your early convenience? Being interested in an objective with a future, your regular

(Testimony of Mrs. Fannie Sniff.)

schedule of remuneration will be satisfactory unless the position is temporary.

Earnestly yours,

.....  
John Doe

This Refers To:

Mr. M. J. Pacman  
721 No. Hoover Street  
Los Angeles, California

---

Standard Oil Company of California  
Standard Oil Building  
Los Angeles, Cal.

April 1, 1942

Mr. M. J. Pacman  
721 No. Hoover Street  
Los Angeles, California

Dear Mr. Pacman:

We are in receipt of your very interesting letter of recent date addressed to the Personnel Manager of Foreign Service.

This company's major foreign field is in Arabia and due to war conditions in the far east we have been forced to curtail operations in that field somewhat and have nothing to offer at this time.

The majority of positions we do have available are for skilled mechanics such as machinists, welders and refinery operators. Men for positions of lesser skill are recruited from within the ranks of the Company as there is always a number of truck

(Testimony of Mrs. Fannie Sniff.)

drivers, mechanic helpers and clerks waiting for an opportunity to go into foreign service.

We sincerely appreciate the interest you have shown and are sorry that we cannot be more encouraging.

Yours very truly,

H. L. SAMUELSON

H. L. SAMUELSON B.

District Representative,  
Employee Relations and  
Personnel Department

JHG:db

---

March 29, 1942

Foreign Service  
Personnel Manager  
Standard Oil Company  
605 West Olympic  
Los Angeles, California

Gentlemen:

To help correct your latest difficulty, could you be interested in engaging the services of a Social Science major graduated from the Los Angeles City College June 1941? This 175 pounds 5'8" aggressive 34 year old Citizen genuinely enjoys any overalls or white-collar duty which aims to expedite efficiency and general welfare. He speaks Italian, is familiar with Commercial Law, The Calif. Penal Code, The Calif. Vehicle Code, and has a good 18 year driving record. Although yet unmarried, his dependability, economy, and logical thinking are

(Testimony of Mrs. Fannie Sniff.)

honestly above par; and his references plus your observations will assure you of his other valuable qualities.

During the past five years (until May, 1941), he has worked nights as an inspector & investigator while attending school during the daytime pursuing Liberal Arts. During the previous two years, he exhausted his past savings by starting in the Elementary Sixth Grade and going through high school; and during the preceding thirteen years, he worked his way through "The Street College of hard knocks" by successfully working as inspector & investigator, entrepreneur, organizer, salesman-ager, crew manager, traveling salesman, driver, factory worker, construction worker, coal-miner, and farmer.

If you can think of any difficult and worthy objective he may pursue or learn to pursue anywhere, may this humble but healthy white man call for an interview between his working hours (9 a.m. to 5 p.m.) at your earliest convenience? Being interested in an objective with a future, your regular schedule of remuneration will be satisfactory unless the position is temporary.

Earnestly yours,

.....  
John Doe

This Refers To:

Mr. M. J. Pacman  
721 No. Hoover Street  
Los Angeles, California

(Testimony of Mrs. Fannie Sniff.)

[Letterhead of]  
The Texas Company  
[Cut]

April 2nd, 1942

Mr. M. J. Pacman,  
721 No. Hoover Street,  
Los Angeles, California.

Dear Sir:

We wish to acknowledge receipt of your letter of March 29th, 1942, making application for a position with our Company, and regret that we know of no vacancy in our organization at the present time for a person of your qualifications, and we do not anticipate having a vacancy that would permit us to offer you employment within the near future.

Your letter will be placed in our active file for a reasonable length of time and we shall be pleased to communicate with you should we have need of your services.

The opportunity that you have given us for considering your application is very much appreciated.

Yours very truly,

J. L. TETE

H

JLT-IF

[Stamped]: Received Apr. 21, 1942. Selective Service State Headquarters, Calif.

[Endorsed]: Filed 1/27/1943.

(Testimony of Mrs. Fannie Sniff.)

That these letters were made a part of defendant's file; the ten day period within which defendant could have appealed had elapsed; the appeal was perfected by the papers being sent to the Appeal Board on April 21, 1942, and on August 20, 1942, the Appeal Board sustained the Local Board's decision by a unanimous vote of 3-0, placing defendant in 1-A-O and on August 31, 1942, defendant was mailed D.S.S. Form 58, notifying him of the Appeal Board's action. On September 3, 1942, there was mailed to defendant a D.S.S. Form 150 to report at 5:45 A.M. on the 14th day of September, 1942, for induction, which was introduced in evidence as "Government's Exhibit 9."

### GOVERNMENT'S EXHIBIT No. 9

[Stamped]: Local Board No. 228 91 Los Angeles County 037 Sep-3 1942 228 5106 Fountain Avenue Los Angeles California

Prepare in Duplicate

[Cut]

September 3, 1942

### ORDER TO REPORT FOR INDUCTION

The President of the United States,

To Mario Joseph Paeman  
 (First name) (Middle name) (Last name)  
 Order No. 589

Greeting:

Having submitted yourself to a local board composed of your neighbors for the purpose of deter-

(Testimony of Mrs. Fannie Sniff.)

mining your availability for training and service in the armed forces of the United States, you are hereby notified that you have now been selected for training and service in the Army

(Army, Navy, Marine Corps)

You will, therefore, report to the local board named above at 5106 Fountain Ave Los Angeles, Calif.

(Place of reporting)

at 5:45 A.M. m., on the 14th day of September, 1942

(Hour of reporting)

This local board will furnish transportation to an induction station of the service for which you have been selected. You will there be examined, and, if accepted for training and service, you will then be inducted into the stated branch of the service.

Persons reporting to the induction station in some instances may be rejected for physical or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and subjects the violator to fine and imprisonment. Bring with you sufficient clothing for 3 days.

(Testimony of Mrs. Fannie Sniff.)

You must keep this form and bring it with you when you report to the local board.

If you are so far removed from your own local board that reporting in compliance with this order will be a serious hardship and you desire to report to a local board in the area of which you are now located, go immediately to that local board and make written request for transfer of your delivery for induction, taking this order with you.

FANNIE SNIFF

Member or clerk of the local  
board.

D. S. S. Form 150

(Revised 6-15-42)

[Endorsed]: Filed 1/27/1943.

---

Witness testified further that on September 4 defendant came to the office of the Board and asked to see his file and go through it, which she permitted, and inquired as to what the necessary procedure was. He was informed by witness [9] that the order for induction had been mailed him the previous day. He stated he hadn't received it; that he wouldn't take the call, he was going to appeal. The witness stated there was nothing the Board could do about it and if he didn't accept the call he would be subject to report to the F.B.I.; that defendant further stated he could not take his call and said 'The Hell with the F.B.I.'; I would not take it if I had to go to prison, and I would if I had to, though



(Testimony of Mrs. Fannie Sniff.)

I prefer not to; that the order to report for induction was evidently received by defendant because it was never returned to the Board and it had the return address on it, and in a telephone conversation with witness, defendant stated that he had received the order to report and that he wanted to know what to do about it; that he did not appear at 5109 Fountain on September 14th and did not answer the roll call on September 14, 1942; that on September 14, 1942, a notice of suspected delinquency was mailed to the defendant signed by Board member John W. Stephens and a duplicate copy thereof was introduced as "Government's Exhibit 10"; that thereafter and about September 19th, defendant telephoned the Board and talked with witness stating he wanted to come to the Board and explain the situation, requesting a hearing before the Board to explain his situation; that he was informed by the witness that the matter was out of the hands of the Board and in the hands of the FBI and to contact them. [10]

#### GOVERNMENT'S EXHIBIT NO. 10

Notice (To Registrant) Of Suspected Delinquency  
[Stamped]: Local Board No. 228 91 Los  
Angeles 037 Sep 14 1942 228 5106 Fountain  
Avenue, Los Angeles, California.

To Mario Joseph Pacman

Dear Sir:

According to information in possession of this Local Board, you have failed to perform the duty,

(Testimony of Mrs. Fannie Sniff.)

or duties, imposed upon you under the selective service law as specified below.

[ ] To present yourself for, and submit to, registration.

[x] Failure to appear for his Induction Call Sept. 14th, 1942 as Ordered on DSS form 150 mailed Sept. 3, 1942.

You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this Local Board, on or before 5 P.M. m., on the 19th day of September, 1942.

Failure to report on or before the day and hour specified is an offense punishable by fine or imprisonment, or both.

JOHN W. STEPHENS

Member of Local Board.

This form shall be made out in triplicate. The original shall be sent to the suspected delinquent, the duplicate shall be sent to the Governor, and the triplicate shall be filed. (Selective Service Regulations, Volume Three, Classification and Selection.)  
D. S. S. Form 281

[Endorsed]: Filed 1/27/1943.

---

On cross-examination by the counsel for the defendant, this witness testified as follows: That the entire file was turned over to the Board of Appeals.

Witness further testified that the file contains a

(Testimony of Mrs. Fannie Sniff.)

carbon copy of Colonel Leitch's letter dated September 16, 1942.

On re-direct examination the witness testified with reference to said letter as follows:

"Q. And how did you receive this?

A. By mail.

Q. On September 16, 1942?

A. That is right.

The Court: It could not be received on the same date it was mailed, could it?

Miss Kluckhohn: September 19, 1942.

The Witness: Yes."

The document referred to was received in evidence as "Government's Exhibit No. 11."

#### GOVERNMENT'S EXHIBIT NO. 11

[Stamped]: Local Board No. 228 91 Los Angeles 037 Sep 19 1942 228 5106 Fountain Avenue, Los Angeles, California.

23-39

September 16, 1942

Mr. Mario J. Pacman  
1100 So. Flower Street  
Los Angeles, California

Dear Sir:

This will acknowledge receipt of your correspondence of September 4 relative to your classification by Local Board No. 228, Los Angeles, California.

The records of this Headquarters disclose that

(Testimony of Mrs. Fannie Sniff.)

your classification has been reviewed by the Appeal Board and that your claims of conscientious objection have been investigated by the Federal Bureau of Investigation; and, as a result, the local board classification of 1-A was sustained.

After considering the information submitted in your correspondence, we are unable to find anything which would indicate that the classification has been erroneously determined or that any of your rights have been prejudiced. In view of this, further action by this Headquarters in the case is not warranted.

Very truly yours,

K. H. LEITCH

State Director of  
Selective Service

cc—Local Board No. 228

[Endorsed]: Filed 1/27/1943.

---

The next witness called by the Government was

VANCE H. FINLEY,

who testified as follows: That he is an optometrist residing at 803 N. Normandie, Los Angeles, and is chairman of Local Board 228 and has been such since the inception of the Board, October 16, 1940; his duties as such include presiding at the regular Board meetings and performing the other duties outlined for his office by the Selective Service Act; that he has known the defendant since

(Testimony of Vance H. Finley.)

[11] he first appeared before the local Board on March 24, 1942, held at the headquarters of Local Board, 5106 Fountain Avenue, Los Angeles; that at the time there were present Mrs. Fannie Sniff, the defendant, and the witness and one other member of the Board, one he thought was Mr. Stephens; that at that time defendant was given an opportunity to discuss his case with him and there explained his position to the Board which, after listening to him, thereupon classified him 1-A-O, which classification is given to men who object to combatant military service, but do not object to non-combatant military service; subsequently defendant wrote a letter to the Local Board which was interpreted by it as a request for reclassification to IV-E, claiming exemption not only from combatant military service but also from non-combatant military service. Witness was shown Government's Exhibit 6 which he identified as the letter referred to. That in said request for reclassification, defendant claimed exemption not only from combatant military service, but also from non-combatant military service. The Board held a meeting to act on defendant's request, at which were present Board member Fox, the witness, and Mrs. Sniff as chief clerk; said meeting was held on the 15th day of April, 1942; by referring to the minutes of the Board's actions on the 15th day of April, 1942, a request for reclassification was considered and rejected and initialed by the witness and Mr. Fox as secretary; that after the case had been sustained

(Testimony of Vance H. Finley.)

by [12] the Appeal Board, the Local Board ordered the chief clerk to send the defendant the order to report for induction.

On cross-examination by defendant's attorney said witness, Dr. Finley, testified as follows: That from the personal interview with the defendant the Board formed the opinion that he was insincere in his views as a non-combatant; that in connection with said letter, "Government's Exhibit 6" which was construed by the Board as an application for a 4-E classification, the defendant did not at the time meet personally with the Board in connection with said application and his application was denied without any personal appearance by the defendant before the Board.

---

The next witness called by the Government,

**ENOS SNYDER,**

on direct examination testified as follows: That he resides at 1360 No. St. Andrews Place and is a member of Appeal Board 17-A and has been such since the organization of the same under the Selective Service Act; that his duties in connection with said Appeal Board include among other things, acting as chairman when the chairman, Mr. Fox Case, is absent, and when acting as such he calls the meetings to order and conducts the meeting and signs the documents; that he has often acted as such chairman.

(Testimony of Enos Snyder.)

Thereupon it was stipulated by attorneys for both parties that the appeal board in question was duly organized under the Selective Service system and duly acting as such.

Witness further testified that on April 30, 1942, the [13] Appeal Board, all three members present, considered the defendant's case and decided that there was no other grounds to sustain defendant in any other classification, and referred it to the FBI which after making investigation recommended that the classification of 1-A-O be affirmed; that the Appeal Board decided to retain defendant in classification 1-A-O due to the fact that he had no grounds for appeal with regard to education, dependents or occupation. Witness said he did not know, nor was there anything in the files to indicate that defendant had a hearing before the hearing officer.

On cross-examination by the defendant's counsel, the witness, Enos Snyder, testified as follows: Before the file was sent to the FBI the Appeal Board had arrived at the decision that the defendant was not entitled to any classification except as a conscientious objector under 4-E and that the Board of Appeal reserved judgment as to his classification of IV-E until it received a report from the Department of Justice; that after the said classification the Appeal Board reserved its judgment until the report was received from the Department of Justice and when said report was received from the FBI it was adverse to defendant and Board denied

(Testimony of Enos Snyder.)

his appeal so far as the 4-E classification was concerned, based upon said FBI report and that the basic or dominant reason for denying the appeal was the reliance of the Board upon the FBI report so far as the 4-E classification was concerned. [14]

On redirect examination by the plaintiff's attorney, the witness, Enos Snyder, testified as follows: That it was the Department of Justice that recommended that the defendant be classified in 1-A-O.

On recross-examination by the defendant's attorney, the witness testified as follows: That the FBI is a bureau of the Department of Justice; that the witness recollected seeing a letter from the Department of Justice of the FBI report, which recommended that the defendant should be classified 1-A-O, which the Appeal Board confirmed. That it was the Department of Justice from which they received their information.

On redirect examination by the plaintiff's attorney, said witness, Enos Snyder, testified as follows: He did not see a report from the FBI and did not consider a report of the FBI along with one that contained the life history of defendant.

On recross-examination, by the defendant's attorney, witness Enos Snyder, testified that the Appeal Board did get a report from the FBI which had a part of the life history of the defendant, or a few sketchy details.

On redirect examination by the plaintiff's attorney, the witness, Enos Snyder, testified that the



Board received a letter from the Department of Justice.

Thereupon the Government rested its case.

The first witness called on behalf of the defendant [15] was

#### ENOS SNYDER

who testified as follows: The witness identified a document taken from the local Board files entitled "Report of hearing conducted by the Department of Justice" in the case of Mario Joseph Pacman, as the document which he referred to as a report from the Department of Justice, the hearing agent of the Department of Justice. He identified the document as the one relied upon by the Appeal Board in arriving at its decision to continue the 1-A-O classification made by the local draft board.

Thereupon the defendant introduced in evidence a letter in which additional information was submitted, marked "Defendant's Exhibit B."

---

#### MRS. FANNIE SNIFF

was called as a witness by the defendant, and testified further upon recross examination by defendant's attorney as follows: Witness identified a telegram dated September 2, 1942, which was marked "Defendant's Exhibit "C", which read as follows:

"Los Angeles, California,  
Selective Service Board No. 228,  
5106 Fountain Avenue,  
Los Angeles.

Received classification yesterday. Am appealing for

(Testimony of Mrs. Fannie Sniff.)

presidential review through the national and state directors. Will you please stay pending induction orders until answer is received.

MARIO J. PACMAN." [16]

---

The witness testified that the Board received said document on September 3, 1942. Defendant's "Exhibit C" was offered in evidence. Ruling on said offer was reserved.

Witness identified a certain document marked for identification as "Defendant's Exhibit D." and testified that the same came from the Board files and consisted of the following:

- (1) A document on the letterhead of Fellowship of Reconciliation, dated March 23, 1942.
- (2) Attached to that is a document from Chapman College, Los Angeles, California.
- (3) A document from Los Angeles City College, dated March 23, 1942.
- (4) A document from Billy Truehart, dated February 2, 1942,

and that said four documents were submitted to the Board of Appeals; that said documents were not considered by the Local Board when he was classified; that they came after the case had gone to the Appeal Board and that when they arrived they were mailed to the Appeal Board; that they were never called to the attention of the Local Board and that the Local Board did not see said

(Testimony of Mrs. Fannie Sniff.)

documents after the file was returned to it because they did not have any bearing.

DEFENDANT'S EXHIBIT D

[Letterhead of]

THE FELLOWSHIP OF RECONCILIATION

March 23, 1942

To Whom It May Concern:

This is to certify that Mario Joseph Pacman of Bishop, California is a member of the Fellowship of Reconciliation, the statement of purpose of which is attached herewith.

Yours very truly,

HAROLD STONE HULL

Secretary

HSH:ESB

Enclosure

[Stamped]: Received Apr 21 1942 Selective Service State Headquarters, Calif.

---

[Letterhead]

CHAPMAN COLLEGE

766 North Vermont Avenue

Los Angeles, California

To Whom It May Concern:

This is to certify that the bearer, Mr. Mario J. Pacman, has been one of my acquaintances for over three years, that I consider him a young man

(Testimony of Mrs. Fannie Sniff.)

of unusual ability, good judgement, and integrity, being able to meet the emergencies as they arise, I would recommend him for any position that would require careful consideration and accurate judgement. His ability automatically takes him out of the common laborer group and any concern using him thus would not be receiving the highest return from their investment. Mr. Pacman has my best wishes and I commend him to any one in search of a capable man of executive ability. He has strong religious convictions that has stood the test. I shall gladly answer any questions regarding him.

Yours truly,

EVARD H. DICKERSON,

Evard H. Dickerson,

Chapman College Custodian

---

[Letterhead]

LOS ANGELES CITY COLLEGE

855 North Vermont Avenue

Los Angeles, California

March 23, 1942

To Whom It May Concern:

This is written for the purpose of certifying that I have known Mr. Mario J. Pacman for approximately four years, most of which time he was a student at Los Angeles City College, but also conducted a magazine subscription agency for the purpose of helping to meet his expenses. In addition

(Testimony of Mrs. Fannie Sniff.)

to coming into contact with Mr. Pacman through his academic activities, I also had fairly frequent dealings with him in the magazine subscription field.

It is my understanding that Mr. Pacman was born in Italy, but there is no question in my mind but that he is a thorough American in every respect and that his sympathies and loyalty are American without reservation in any respect.

In all my contacts with Mr. Pacman I have been impressed with the fact that he makes his decisions after careful consideration and then lives up to his word regardless of profit or loss to himself. In other words, I have always found that I could rely implicitly on his doing what he promised at the time agreed upon, and in a spirit of cooperativeness and helpfulness.

I would not hesitate to recommend Mr. Pacman for any position which he believes he could handle, because his own sense of responsibility would, I am sure, keep him from attempting anything he was not sure he could do properly, and because his attitude is one of consideration for the rights and privileges of others.

Respectfully submitted,

HEBER G. HARRISON

(Testimony of Mrs. Fannie Sniff.)

[Letterhead]

BILLY TRUEHART

Radio's Original Tap Dancer

Mail Address P. O. Box 661

Hollywood, California

Feb. 2, 1942

To Whom It May Concern:

I have known M. J. Pacman for a number of years, and have known him to be a clean, honest, moral, honorable and extremely conscientious man.

He has been extremely devoted to principles of justice and peace, and, I happen to know, has been actively engaged in propagating ways and means of bringing about world peace.

BILLY TRUEHART

Billy Truehart

[Endorsed]: Filed 1/27/1943.

---

Witness was shown a document dated March 27, 1942, marked "Defendant's Exhibit E" and stated that it was con- [17] sidered by the Local Board in connection with the classification of defendant; same was introduced in evidence as "Defendant's Exhibit E."

(Testimony of Mrs. Fannie Sniff.)

DEFENDANT'S EXHIBIT E

March 27, 1942

Selective Service Board  
5106 Fountain Avenue  
Los Angeles, California

Gentlemen:

It would take volumes to explain the many reasons for my position, but I am here attempting as brief a summary as possible which shall touch on many of the important factors which caused and place me in this immovable position. To begin with, I definitely do not believe in wars nor in the militaristic system by which they function, nor that peace is a product of war, and so far as my philosophical judgement is concerned, I do not wish to be any part of it. However, I do not aim to win because I do not believe things are won or lost, I do believe only that they are solved. This matter is best solved by ceding my objective, but by assuring you that I definitely cannot see your objective as is. However, there is a third objective which you and I both may agree upon and this objective is the purpose of this document.

I realize that you are one of the most powerful creation of mankind and that no individual or minority group may obstruct you without the greatest material loss to the obstructors. And, that you are interested in persons without taking the time to consider the many factors that compose each

(Testimony of Mrs. Fannie Sniff.)

person. However, just as a brick house is only defined by the kind of bricks and other factors of which it is composed, I think it necessary that some of the important factors that compose my person be known also for your own good.

I was raised in poverty by immigrants who used a system very much like the military system. In short, "right or wrong, the boss has spoken; and it must be so". This system agreed with me so well, that my body was only an unhealthy broomstick and it wasn't until after I found it necessary to abscond, that I attained a fitting proportion. With only a fifth grade education, I went out into the world and became an individualist who only worked on commission and piece-work. This gave me the necessary freedom which permitted me to climb far enough to win the approbation of my proletariat colleagues. With all this freedom, I have never abused it, but willingly deprive myself of many of the activities and pleasures for which one lives. I did this by working nights and studying days, or vice-versa, and endeavoring to start a concrete International Peace Plan similar to that of President Wilson.

I have aimed at making myself fit to live and earn a living with some security in a constructive field. And, although I have seen a certain young lady limitedly during the past three years, I, not she, thought it best and most considerate not to become one until I had some assurance of a livelihood during good behavior.



(Testimony of Mrs. Fannie Sniff.)

I earned a civil service position and have served my probationary period but instead of going through with my plans, I have asked for leave from duties, which are socially constructive, so that I may better serve the United States in other duties which are more constructive. And if you know of any such duties which I may assume, I shall appreciate your information so that I may apply for it. If there are no valuable civilian duties, I wish to volunteer for any of the many necessary militaristic duties within our borders for as long as they do not include the oath nor the promise that I will perform any act I think directly or indirectly destructive. In short, I know that I cannot shoot at any individual in any military uniform because behind that individual I vividly vision a military officer, with gun drawn, telling him that he must kill or be shot in the back.

I do not say this for the sake of personal safety because I will gladly volunteer constructive relieve services under the direction of the Red Cross or any other civilian welfare unit on lands other than ours. I shall be glad to give my life if only the people of this world will know that it was done in the endeavor to show them that war is not the means to peace. As further proof of this, I shall gladly assume the duties of a winch man who holds on to the world's best lightning rod (the barrage ballon), or dispatch messages which to me will save the lives of many. Knowing that the enemy will do its utmost to stop me because the success of

(Testimony of Mrs. Fannie Sniff.)

my mission would be an obstacle to them. Or I could try to build the United States-Alaska railway because in its construction I could perceive commercial progress, etc., etc.

I cannot destruct because wars and the means of wars do not bring peace by any rule of logic. Because in a crisis I become cold and thoughtful instead of heated, excited, and emotional. Also because I cannot believe a nation is worthy of destruction solely because some person or group within it is guilty of a crime, any more than you would believe the alien who having heard of Mr. Dillinger would state: "The Americans are daring killers and robbers". Believing this, would be drawing a general conclusion from a particular premise and the accuracy of such a conclusion is refuted by all the rules of logic. These conclusions are no more true than the following: "Your brother is a killer, therefore you, your family, and your relatives are killers".

In substance I cannot do that which I cannot perceive worth doing, but I do wish to do any of the many constructive things that are necessary. For you to be successful for the good and the success of the United States I entreat you to permit me to do any constructive duties and thereby utilize my many valuable qualities rather than waste the energy necessary to make me a killer or a purposeless doer. Because I know that what it has taken me thirty-five years to create with personal vigor plus

(Testimony of Mrs. Fannie Sniff.)

the direction of competent, social leaders cannot be changed by any human creation in less time. Although I agree and do not dispute that you could forcefully destroy all of my potential values to you very very easily, is this destruction of any value to the United States?

So that I may render valuable and enthusiastic service, I wish a classification which assures me that I will never be asked nor ordered to do a destructive act nor taking an oath which even promises such an act.

Yours very sincerely,  
MARIO J. PACMAN  
Mario J. Pacman

[Stamped]: Received Apr 21 1942 Selective Service State Headquarters, Calif.

[Endorsed]: Filed 1/27/1943.

---

Witness identified defendant's "Exhibit F" addressed to Appeals Board No. 17 and testified that it was forwarded to the Appeals Board together with the two documents attached to "Defendant's Exhibit F" for identification.

Plaintiff, by its counsel, objected to the receiving of said Exhibit "F" in evidence on the ground that it was immaterial and not done properly in a cross-examination, and the objection was sustained. Exception was allowed the defendant.

Witness identified defendant's "Exhibit G" for

(Testimony of Mrs. Fannie Sniff.)

identification and testified that it was not shown to the Local Board, but did go to the Appeal Board but was not considered by the Appeal Board. The objection to offer of defendant's "G" in evidence was sustained and exception allowed defendant. That she identified the document which went to the Appeal Board introduced in evidence as Government's "Exhibit 8", filed by the defendant with the Board under date of April 18, 1942, and certain enclosures in connection with said document. Said document was read to the jury as follows:

"124 South Main Street,  
Bishop, California.  
3-18-42

[18]

Federal Bureau of Investigation  
510 South Spring,  
Los Angeles, California.

Gentlemen:

During the spring of 1941, I took an examination at your office. Since I do not know if I passed it, I will appreciate information as to the probability of an assignment which aims to disclose those willfully guilty of destruction, or those who willfully plan to destruct or disrupt. Remuneration will be a minor factor in any just and constructive assignment.

"If your answer is delayed so that it would not be received on the 21st, will you please address it

(Testimony of Mrs. Fannie Sniff.)  
to 606 S. Bonnie Brae, Los Angeles, California. I  
plan to come there this week-end.

Cooperatively yours,  
(Signed) M. J. Pacman."

---

Witness testified that prior to September, 1942, when she had the conversation previously testified to she saw the document handed to her, dated March 28, 1942, addressed to Personnel Manager, Federal Bureau of Investigation, Washington, D. C. which was read to the jury as follows:

"721 N. Hoover Street,  
[19]  
Los Angeles, Calif.  
March 28, 1942.

"Personnel Manager  
Federal Bureau of Investigation  
Washington, D. C.

Gentlemen:

During the spring of 1941, I took an examination at your office. Since I do not know if I passed it, I will appreciate information as to the probability of an assignment which aims to disclose those willfully guilty of destruction, or those who willfully plan to destruct or disrupt. Remuneration will be a minor factor in any just and constructive assignment.

“My finances would permit me to come to Washington and maintain myself during training period.

Cooperatively yours,  
M. J. PACMAN.”

---

The defendant,

MARIO JOSEPH PACMAN,

was called as a witness on his own behalf, and on direct examination testified as follows: That during the past few months he had done nothing; that during the last year he has been claims deputy for the State Department with the Junior classification and that prior to that he was an investigator for [20] the WPA and went to school. He was claims deputy for about a year and a half and while he was investigator for the WPA in the County of Los Angeles, he was on duty alertly (to keep watchment on alert) and in the day time went to school; that he filled out and sent to the Board, “Government’s Exhibit 3”, being a special form for conscientious objectors.

There was read to the jury some of the printed questions and the answers thereto, which are part of Government’s Exhibit No. 3.

Witness stated that Government’s Exhibit No. 6 was a letter that he sent to the Board.

Witness identified document dated March 27 as a letter he wrote to the Board setting forth the reasons why he must take the stand of where he

(Testimony of Mario Joseph Pacman.)  
felt just a little trifle short of being able to swear to do anything they wanted him to. He testified that the original of said letter was mailed to the Board from Torrance, California, and the said document was marked for identification as defendant's "Exhibit H." Whereupon defendant was withdrawn from the stand.

---

MRS. FANNIE SNIFF,

was called as a witness by the defense, and on direct examination by defendant's counsel, testified as follows: That she opens all the documents that come through the mail and placed the same in the proper registrant's files, but other than that makes no entries or record of receiving the same; that the same are not [21] stapled to the file. Whereupon witness was shown defendant's "Exhibit H" for identification, attached to which was registration receipt issued by the Post Office, and testified that she did not remember receiving it or reading it.

The court sustained objection to the introduction of defendant's Exhibit "H", and an exception was allowed to the defendant.

---

On Stand:

MARIO JOSEPH PACMAN

Whereupon defendant resumed the stand and on direct examination testified as follows: That he

(Testimony of Mario Joseph Pacman.)

sent the original of a telegram marked for identification "Defendant's Exhibit I", which was offered and received in evidence, and was read to the jury as follows:

"Selective Service Board No. 228,  
September 2, 1942,  
5106 Fountain Avenue  
Los Angeles, California.

Received classification yesterday. Am appealing for Presidential Review through the National and State Directors. Will you please stay pending induction order until answer is received.

MARIO J. PACMAN."

---

Witness testified that he had a conversation with Mrs. Sniff on September 2, 1942, the same date on which he sent the telegram—"Defendant's Exhibit I"—and the telegram was sent after said conversation with Mrs. Sniff; that in said conversation with Mrs. Sniff on September 2, 1942, he [22] stated to her that he had reviewed the FBI investigation of the appeal officer's summary of the FBI investigation and inquired if he might see the Board members and he was informed by Mrs. Sniff that the Board was completely through with his case and that he might plan to receive induction order within the near future; whereupon witness asked her if the Board would be interested in his doing anything else constructive, to which she replied "No." The witness inquired if he could join the Maritime



(Testimony of Mario Joseph Pacman.)

Service of highway inasmuch as he had corresponded and talked with the personnel manager of one of the bases there and had also corresponded with a company in Oregon for Alaska work and that Mrs. Sniff replied that there was nothing the army would do or could take place after he had had an appeal; further, that he asked Mrs. Sniff if he could read the oath or if she could direct him to any place where he could see the the oath—that is the oath required of those taken into the army; that he had heard they must take an unqualified oath to do anything, to which Mrs. Sniff replied, (p. 130, lines 19-20) “There is only one oath and you are no better than anyone else, and you take it like everybody else. I can’t direct you to anybody else because I am not permitted to.” Witness testified that Mrs. Sniff then said that he could only plan to receive an induction order in the very near future; that witness then stated he believed he should have a reconsideration of his case because the grounds upon which he had been [23] judged were false and he could prove it and if an induction order were sent he did not know whether he would be able to fill it; that there was no conversation between them whether or not he was going to take the matter up with any other agency of the Selective Service System; that he stated to Mrs. Sniff that he wished a hearing and inquired for the Board members.

There was next identified by the defendant, and introduced in evidence defendant’s “Exhibit J”, a

(Testimony of Mario Joseph Pacman.)

copy of a telegram sent by the defendant the second day after he had been to the draft board and talked to the clerk, to Major K. A. Leitch, as follows:

“Major K. A. Leitch,  
Selective Service Headquarters  
Sacramento, Calif.

Sir:

September first I received appeal classification mailed day before. Am sending conclusive proof that Presidential Review is justly necessary tomorrow, but just received induction order mailed yesterday from Local Board 228 at 5106 Fountain Avenue, Los Angeles. I have no criminal record yet, and will appreciate a stay of induction pending review which I shall respect. Please inform if I should see Prosecutor. Answer by Western Union Collect. [24]

MARIO J. PACMAN,  
1116 South Flower.”

---

Witness then identified defendant's “Exhibit A” for identification, being the telegram he received from Col. Leitch, in answer to said defendant's “Exhibit J”, same was received in evidence and read to the jury.

(Testimony of Mario Joseph Pacman.)

DEFENDANT'S EXHIBIT A

[Telegram]

WESTERN  
UNION

(28)

SVO Sep 5 PM 1 03

D Sep 5 PM 1 34

1942 Sep 5 PM 12 44

BZA97 15/14 Collect—Sacramento Calif 5 1157A

MARIO J. PACMAN—

[Penciled in, following name]: 62+06

1116 So Flower

Answer Sept 4th Losa—

[Stamped in red ink]: C266.

Reurtel. Upon Receipt Your Correspondence. Will Give Matter Consideration and Determine Appropriate Action.—K H Leitch State Director of Selective Service.

Pacman.

BQ97 Mario J Pacman

[Endorsed]: Filed 1/27/1943.

---

Witness next identified defendant's "Exhibit K", which was offered in evidence but the objections thereto were sustained, and an exception allowed the defendant.

Defendant identified defendant's "Exhibit L" for identification, which was offered in evidence, but the objections thereto were sustained, and an exception allowed the defendant.

## MRS. FANNIE SNIFF

was recalled as a witness on behalf of defendant, and upon direct examination by defendant's attorney testified as follows: That defendant's "Exhibit E" is the original of the document offered in defendant's "Exhibit H" for identification (which is a copy); that it might have been in the defendant's file at the local draft board; that it might have come in after the case was sent to the appeal board and may have been sent to the appeal board; that she forwarded "Exhibit E" to the State Selective Service Headquarters about April 20, 1942; that on the 15th day of April, 1942, the request for reclassification from 1-A-O to 4-E was considered rejected by the Board; that witness submitted to the Board all documents filed by the defendant with the Board for its attention and which were in [25] the files of the Board before the 15th day of April and that the same decision and order of April 15, 1942; that as to "Exhibit E", witness testified that it was referred to the Board in the connection with the ruling of the Board on April 15, 1942, and if it was in the file, it would be so referred, and testified further that it might have been in the files, but she couldn't say definitely, although she would add that anything that came in to the Board before April 20 was in the file because that was when the papers were sent.

Defendant's "Exhibit E" was read to the jury.

Witness testified that she told the defendant that after the order of induction was mailed to him the

(Testimony of Mrs. Fannie Sniff.)

local board had no further authority in the matter; that her copy of the Government's publication on the Selective Service System, contained the following: (page 165, line 22, to page 166, line 4).

“Section 642.3. Disposition of Delinquencies. If a suspected delinquent has been located as a result of the Local Board's efforts under Section 642.2 or a suspected delinquent has reported voluntarily to a Local Board, the Local Board shall carefully investigate the delinquency. If the Board finds that the suspected delinquent is innocent of any wrongful intent, the Local Board shall proceed to [26] consider him just as if he were never suspected of being a delinquent.”

Defendant's “Exhibit H” for identification was withdrawn with the Court's permission.

---

The defendant,

MARIO JOSEPH PACMAN,

was recalled and on direct examination by defendant's attorney, testified as follows: Defendant's “Exhibit M” was introduced in evidence and he testified that he sent the original of same, which is a telegram to the National Director, on September 4, 1942.

Defendant testified that he received the order of induction on September 4, 1942, directing him to appear on September 14, 1942, and that he did not so appear for induction.

(Testimony of Mario Joseph Pacman.)

Defendant identified defendant's "Exhibits N and O" for identification and testified that he relied upon the information contained therein and because of said reliance failed to appear for induction.

The court sustained the objections to the introduction of defendant's Exhibits "N" and "O" into evidence, and allowed an exception to the defendant.

Defendant testified that he sent Government's "Exhibit 6" to the Board, being letter dated April 13, 1942, and addressed to the Board; that prior to April, 1942, he asked for a 1-A-O classification for service where he would not have to kill and that the statement which he made in said letter, Government's "Exhibit 6", were true; that he [27] was willing to go into the army as 1-A-O and function under military supervision in April, 1942, if he would be assured that he would not be required to kill or engage in combatant military service; that the first time that he received any word from Col. Leitch that his request for a review or appeal, or request for an intervention by him was turned down, was on September 17, or 18th, 1942, the same having been mailed September 16, 1942; that he was requested to report on the 14th day of September.

Witness testified that he would have complied with the order of induction if he did not believe that the order was [28] being reviewed.

Defendant's counsel then asked the following question: (page 193, lines 15-19).

(Testimony of Mario Joseph Pacman.)

“Did you, prior to the time of being prosecuted, make any attempt to get into any branch of the United States Army, under military supervision, where there would be danger to you, but would be such you would not have to kill?”

To which an objection was sustained with the comment by the court: “I have listened enough to your arguments.”

To a question by defendant’s counsel: (page 193, lines 25-26) “Would you be willing now to accept service in the military service or Signal Corps where you would be assured you would not have to kill?” Objection was made and sustained.

Witness testified that in failing to report for induction he did not intend to commit a felony; that he did not intend to violate the Selective Service Act when he failed or neglected to report for induction.

When defendant’s counsel inquired of the court, “Will your Honor permit me a short recess so I may get my papers in order?”, the Court responded (page 196, lines 4-5) “I am going to try to get through. I will have to ask you to proceed.”

All of the documents heretofore offered by defendant [29] and received and marked for identification were again offered in evidence and the court denied the admission of them in evidence and the court denied the admission of them in evidence, but allowed exceptions to the defendant.

(Testimony of Mario Joseph Pacman.)

A group of documents marked defendant's Exhibit P'' were offered in evidence and the objections thereto sustained with exceptions allowed to the defendant.

On cross-examination by the plaintiff's attorney, the defendant testified as follows: That he has been known by the name of Maniccia; that he was unable to use force and therefore asked for a conscientious objector's classification when the board construed his position to be that of a IV-E; that he was unable to take an oath to killing, in the event it is necessary; that after he was told he had to take an unqualified oath, he did not desire to take the oath that was given in order to serve in a non-combatant military service; that he joined the State Guard at Bishop, California about one year after he filed his Selective Service questionnaire; that he also attempted to join the Federal Bureau of Investigation as a special agent; that he knew at the time he would have to take an oath in order to join the FBI; that he knew as an FBI agent there would be times when he might have to carry a gun; that in the event it is necessary he would have to shoot to kill, that is, when he is satisfied that the person he was shooting was definitely guilty and there was no other way out of it, and after he [30] registered with the Selective Training and Service Act of 1940, he attempted to get a position with the FBI; that he did not file the special form for conscientious objectors until about thirteen months after the Selective Service



(Testimony of Mario Joseph Pacman.)

Questionnaire because he did not want to be looked down upon and because of circumstances, people, and general conditions; that because the draft was talked up to be just a physical training program of one year—the President said it was only within our country and the Gallup Poll said 80 percent of the people would not sanction the war, he did not think he would ever be required to kill anybody; that when he appeared before Local Board 228 on March 24, 1942, the Board read to him from a book what the 1-A-O classification covered and witness told them he would be willing to go into 1-A-O classification and acknowledged that what they read was within his conscience and he could do it; he denied that he attempted to resign from the California State Guard in order to make his activities compatible with his new position; admitted that he did resign, but that he resigned prior to that time; that he indicated in his letter of appeal, dated April 15, 1942, that he would like an occupational deferment in the event they were willing to give it to him and that he appealed to the state and national Selective Service Directors and to the President, requesting either a 11-A or IV-E classification because in his opinion he felt he had been judged on grounds which he [31] could prove definitely false; that he was willing to take a 11-A classification in the event it was given to him as well as the others.

(Testimony of Mario Joseph Pacman.)

Cross-examination:

That he received a letter, Government's Exhibit 12 received in evidence, dated September 3, 1942, from Local Board No. 228.

GOVERNMENT'S EXHIBIT NO. 12

Sept. 3, 1942

Mr. Mario Joseph Pacman,  
1100 So. Flower St.,  
Los Angeles, Calif.

Re Order No. 589

Dear Sir:

Your order for Induction for September 14, 1942 is enclosed. This Local Board has no authority to stay your Induction as requested by telegram. A stay of Induction can only be ordered by the State or National Director of Selective Service. Unless such orders are received by this Local Board you must report for Induction on date ordered.

Failure to comply with this order is subject to severe penalty.

Yours very truly,

Local Board No. 228

.....

Chairman

VHF/fs

[Endorsed]: Filed 1/28/1943.

---

Defendant testified that after receiving letter, Exhibit "12", he felt he could still have recourse to

(Testimony of Mario Joseph Pacman.)

the State and National Directors of the Selective Service system; that the time the order to report for induction was sent to him the local board did not have a stay of induction in his case; that after September 3, 1942, upon receiving notice he did not communicate with the board until after the time had expired for induction; he recalled Mrs. Sniff telling him if he did not report, it would be a case for the FBI, but he did not recall being informed by Mrs. Sniff that failure to report for induction would be a violation of law, but he had enough sense possibly to presume that. He testified he did not know if he didn't report he would be violating the law, and denied saying: "To hell with the FBI." That he took, or attempted to take an appeal to State Director in the best faith he ever had in anything and denied that he took it to stall induction so he wouldn't have to go into the military service; that if he had not attempted to appeal he would have reported for induction at the time and place so ordered, [32] and on September 19th he received a letter from the State Director of Selective Service stating that they could take no further action in his case. After he received word from the State Director of Selective Service that he would not take any action in the case, witness did not submit himself for induction because he expected another induction order; that after he had been notified by the State Director they would not act on his case, he did not contact the Board, although after he received a notice of de-

(Testimony of Mario Joseph Pacman.)

linquency he called the Local Board and asked what it meant; that it says to come here and witness asked if he might come and when did the Board want him to come; Mrs. Sniff replied: (page 215, lines 22-23) "Don't bother with it, your case is in the FBI hands"; that said conversation took place the same day he received the delinquency notice.

Thereupon, the plaintiff introduced in evidence a letter from Mario J. Pacman to Dr. Vance H. Finley, Chairman of Local Board 228, marked "Plaintiff's Exhibit No. 13", which was read to the jury.

#### GOVERNMENT'S EXHIBIT No. 13

[In pencil]: Letter to Board Chairman

October 2, 1942

Dr. Vance H. Finley  
803 N. Normandie  
Los Angeles, California

Dear Sir:

Recently my reasons were considered worth presenting to the Appeal Board. From a procedural point of view, the recommendation of the Dept. of Justice and the Appeal Board was fair and accurate. However, the recommendation is accompanied by the reasons for factors used to determine it, and I Wish, And Will Appreciate, The Opportunity To Prove Conclusively And Beyond Any Doubt That The Reasons Or Factors Which Produced This Recommendation Were False, Untrue, Dis-

(Testimony of Mario Joseph Pacman.)

torted, Or Irrational; even if they were then labeled and accepted as "True and correct"

I cannot believe that your conscience will permit you to send an innocent person to live and associate with criminals only because you insisted that you should close your mind and eyes to a decision which was erroneous because the reasons and factors which produced it were then not known to be false; or because I ceded to non-destructive service at a time when I believed my wishes would be fully respected, and when the "Commander in Chief" had assured me that it only amounted to one year of non-combatant physical training within our Country; as an example, when you agree to give your Church \$5, you have not stated that you could give \$20, nor that it may expect the greater sum.

To live and associate with criminals is better than to kill people; but psychology, history, and a dozen proverbs assure you that the result of this criminal pollution will not be to the best interest of your Country nor society when there are better ways.

I am encouraging Necessary Production, and now receiving only \$86.83 per month (no more than a soldier's pay and sustenance) for my efforts; but until I am satisfactorily assured that I will not be expected nor ordered to do a destructive act, I will appreciate an honest reconsideration of my classification upon its true and correct facts, reasons, or factors because a conclusion obtained from false

(Testimony of Mario Joseph Pacman.)

reasons and factors is false even when every step of procedure in its calculation is accurate. If I may, I will gladly appear before you to explain further, or to be advised.

Respectfully yours,

MARIO J. PACMAN

Mario J. M. Pacman

1100 South Flower Street

Los Angeles, California

Ri. 4181, Extension 272

[Endorsed]: Filed 1/28/1943.

---

Witness stated he was willing to go into military service at the time he had been ordered to report had it not been for the pending appeal, yet in October he was still asking the Board to reconsider his case because he had received another letter from the State Director's office which stated they had gone through my file, and admitted that in the Commissioner's office Mr. Bledsoe of the U. S. Attorney's [33] office offered him one opportunity to go into the army after his arrest, but that offer was conditional, if he joined the army, Mr. Bledsoe would dismiss the charges, but he couldn't do so unless Mr. Bledsoe removed the charges and then let him join the army; that he did not receive any stay of induction from the State Director of Selective Service of Lewis Hershey, the National Director of Selective Service.

(Testimony of Mario Joseph Pacman.)

On redirect examination by defendant's counsel, the defendant testified as follows: That he heard from General Hershey after September 14, 1942, the date of induction, in response to a telegram; that he wrote to Leo V. Silverstein, U. S. District Attorney and Mr. Bledsoe, one of the Ass't. U. S. Attorneys regarding joining the army after the order of induction and even after his arrest he applied at the U. S. Coast Guard in the Federal Building in Los Angeles; that he inquired of someone in uniform there whether it was possible for someone who was a conscientious objector to serve without being a traitor to himself, or without killing and the answer was "No."; that he made inquiry at the induction center at 6th and Main Sts., about going into the Medical Corps in some assignment where he wouldn't have to swear to kill and was informed by an officer there that they only wanted people they knew they could rely upon in case of an emergency and that they would not take anybody in the medical corps, that you had to be taken in through the in- [34] duction center and you have to take the oath; that he was willing to go into the medical corps if he would have assurance he would not have to kill; that he also attempted to get into the Maritime Service, but when witness explained to the man in charge there his conscientious objections, he was advised not to join because while one ship might have food, another would carry munitions and he could not pick and choose the ships he would work on; he was

(Testimony of Mario Joseph Pacman.)

told by the gentleman at the Maritime Service: (page 228, lines 20-22) "You and your principles won't permit you to do that. You will have to refuse and you will be guilty of breaking a law," and the man said further that these ships were plying the waters carrying munitions to Africa and other places. When witness asked him if there were no food ships, the man replied: (page 229, line 1) "You can't designate what ship you go on." Witness testified that he would have gone on a food ship, although he knew it was dangerous to do so.

Witness further testified that he interviewed a Mr. Logg, Federal Building, Los Angeles, in charge of the Signal Corps Training Service on several occasions two or three months before the date of his testimony; that he told Mr. Logg he wanted to do anything where he would not have to fall down on his employers by failing them—a duty which wouldn't require him to kill. (page 230, lines 5-7). That he knew it was dangerous to be in the Signal Corps and that the Signal Corps functions on the fighting front, but that [35] he was willing to do that and stated his reasons therefor: (page 230, lines 21-24-25-26, and page 231, lines 1-6).

"I told Mr. Logg exactly my position. I told him how old I was. I wanted to be of service. I didn't want to be a traitor. I explained it was a bigger traitor to fall down on someone when they depended on you than at any other time. They could give you assurance if you are assigned to one general, and he knows about



(Testimony of Mario Joseph Pacman.)

it, but if you are assigned to another, he won't know about it. He went on and said, 'We will train you for three months or possibly six months, give you a technical training, with your background you can do it.' "

Witness testified he told Mr. Logg his qualifications and showed them to him and Mr. Logg said he would be fitted; that Mr. Logg said that witness couldn't ask for more reasonable assurance than to know after they had given him a training that was technical training like that they certainly wouldn't give him a gun which any eight out of ten people were willing to do, and they couldn't displace a technical man as easily as they could displace a person that carried a gun, that was reasonable; that witness accepted the offer but that he was prevented from getting into the Signal Corps because there was an indictment. At this point see Transcript, page 232, line 22, where the following appears: [36]

"The Court: Just a moment, that is not proper."

When asked if he was willing to join the Signal Corps now, if there was no indictment against him, the witness answered "Yes."

Witness testified that he is of Italian descent; that he joined the California State Guard in Bishop in 1941 and when he had a state job at Bishop, California. He was given the job on 6 months probation and after he was there four months people began organizing the State Guard and Witness's

(Testimony of Mario Joseph Pacman.)

manager stated: (page 237, lines 12-16: "Every good guy would join it, a sales talk, and I was told, why would I object to helping people out, supposing Bishop were bombed, or supposing they try to bomb our aqueduct here in the city. That became a police system to me." That when he joined the State Guard he did not expect to participate in killing anyone nor did he expect to violate his conscience. That witness informed the officers of the Guard that he would not be able to kill anyone; that he went regularly twice a week for two or three weeks and: (page 238, lines 13-17)

"Then they brought in the guns and started, the lieutenant,—the guy that calls himself lieutenant explained the guns, and how he put a sabre in the Germans and he put quite a bit of gusto in it, and I never went back; and a week later I took a resignation."

Again in answer to the question, "Was that the reason?" [37] witness testified: (page 238, lines 19-21) "Yes; it became militaristic then; it was just the opposite. There is a difference between a police department and a soldier."

Defendant testified that he wanted to become a member of the FBI not only on account of the pay, but also because he liked investigation and because the FBI does not go out to kill people, and that he felt they were doing a constructive work; that the witness was told he might be given an assignment where he wouldn't have to carry a gun

(Testimony of Mario Joseph Pacman.)

or kill anybody and that he did not consider joining the FBI would require him to violate his conscience any more than when he first joined the State Guard, so far as killing people was concerned.

The following appears on page 244, lines 1-2:

“The Court: I am going to finish this case tonight. I have spent two whole days on it.”

On recross-examination by the plaintiff's attorney, the witness testified as follows: That some of his efforts to join the armed services occurred after he was inducted, and most of them occurred after he had received the order to report and failed to report, but that he didn't look too hard to find something to volunteer into.

On redirect examination by defendant's attorney, the witness testified as follows: That before the indictment against him he inquired if there was any service where he could act or serve on the highway of the United States, in [38] Hawaii, Panama, or any place where he could see it was constructive; that he wrote letters to the U. S. Engineers in Panama and the Canal Zone, copies of which letters the witness had with him; that he wanted any job from overalls to white collar, and in any place in the world, because then his duties would be constructive. He even interviewed the personnel manager of the naval air bases in Hawaii; that he did so before the indictment, but after the United States was in the war and although it was dangerous to go to Hawaii, it was construction or reconstruction.

(Testimony of Mario Joseph Pacman.)

In answer to question by the Court, witness testified that he was required to take an oath when he joined the State Guard to obey his superior officers, and that oath and the one necessary to enter the armed forces of the United States required the same obligation to obey his superior officer, and neither oath said anything about killing.

On redirect examination by defendant's attorney, witness testified that when he took the oath on joining the State Guard he understood that he was not expecting to be required to kill anyone any more than any policeman, and that while there is nothing in the oath of a soldier about killing the soldier's profession defined that.

---

Thereafter,

MRS. FANNIE SNIFF,

recalled as a witness by the Government, testified as follows upon direct examination: That she was not sure whether the date of the personal conversation with Mr. Pacman at the office of the Local [39] Draft Board was September 2nd or 4th, but she did have a conversation with him, and that she had another telephone conversation with him after he had received his delinquency notice; that this was the only conversation that she had with him after sending out the order to report for induction; that she did not recall all of the conversation

(Testimony of Mrs. Fannie Sniff.)

with the defendant either on September 2nd or 4th, but defendant stated to her in the course of said conversation of September 2nd or 4th that he was going to take an appeal to the Director of Selective Service; that witness told him it would have no bearing on his induction; that he could not hold up his induction card and that they could not stay his induction unless advised by the Director of Selective Service; that the Local Board did not receive from the Director of Selective Service or anyone a stay of induction for defendant and at that time witness informed the defendant that he would have to abide by the induction order.

On cross-examination by the defendant's attorney, Fannie Sniff testified as follows: That she informed the defendant that it would do him no good to go to the Director of Selective Service.

Whereupon the Government and the defense both rested and adjournment was taken until Friday, January 29, 1943, at 10 o'clock.

On convening court at said time, the defendant moved to withdraw defendant's "Exhibit B", which was granted. [40]

(The following proceedings were had in the presence, but out of the hearing of the jury.)

The defendant's attorney made an offer proof with respect to said documents marked for identification, offered in evidence, but not allowed to be introduced in evidence, which offer was in words and figures as follows:

“One, with respect to the hearing undertaken by the hearing officer, referring to the hearing officer Williams of the Department of Justice; that the hearing officer violated an order or regulation of the Selective Service System in connection with said hearing; that in addition the hearing was unfair and offended due process of law because, without notice or knowledge to the defendant and because, based on information in the possession of the hearing officer, which information was adverse to the defendant, was false and prejudicial, and the nature or contents of which information was not communicated to the defendant; that the hearing was conducted in an arbitrary, unfair and capricious and unreasonable and prejudicial manner; and that the decision and recommendation of the hearing officer, of the Department of Justice, is unsupported by any evidence.

“Two, that the local Board violated due process of law in that its decision, including particularly its order in April, 1942, rejecting the defendant's claim of 4-E classification, was based on prejudicial and false information as to the defendant, which said information was not communicated to [41] the defendant, concerning which information the defendant had no notice or knowledge; that the decision of the said Local Board was arbitrary, unfair, capricious and unsupported by any evidence, and in violation of the evidence supplied to the Board; that said document will further tend to prove that the actions of the appeal Board was a violation of due

process, in that the Appeal Board relied upon the findings of the Department of Justice, which findings were made under the circumstances afforded said department.

“Now, we further offer to prove that the defendant, if permitted to testify, would testify concerning the nature of the hearing before the hearing officer, and that in the course of said hearing the nature of the information in the possession of the hearing officer, containing evidence against him, was not communicated to the defendant; and that he was not given an opportunity to refute that.

“We make similar offer of proof with respect to the hearing conducted by and evidence taken before the Local Draft Board, namely, that said Board relied upon information which was prejudicial to the defendant, the nature of which was not communicated to the defendant. He was never afforded an opportunity to reply to it, or to meet the charges contained in said information.

“The Court: I will sustain the objection of the Government to the evidence. Of course, the offer of proof is subject to the same objection, and the court will so rule.” [42]

Counsel for defendant moved to reopen the case to ask the defendant several questions and to call another witness whom he thought was very important and whose testimony would not take very long. In granting the motion the Court said: (Page 259, lines 9-11).

“The Court: It is a matter entirely in the dis-

cretion of the Court. I am three days on a case that should have taken one. I will permit it."

Whereupon defendant's counsel stated his exceptions to certain of the Government's requested instructions: (Page 259, lines 14-26; page 260, lines 1-5).

"Mr. Wirin: The defendant excepts to Government's instruction, proposed instruction No. 4, particularly at the moment, to the portion of the instruction which is covered in the first eight lines of the instruction, on the ground it is not a complete statement of the law.

"I think, certainly, the next one, the first part. In effect we except to the entire instruction. We except to the Government's proposed instruction No. 5.

"We except to 6, unless the court qualifies the last statement, 'It must be obeyed by the registrant.' It should read, 'Unless the registrant, in good faith, believed the order was not in effect.'

"The same point in connection with 7, is to be made with respect to Government's requested instruction No. 7. We object to the instruction, in the present form; we have no [43] objection if there were added: 'unless the jury finds the defendant, in good faith, believed there was no order of induction outstanding, or that the order had been stayed.'"

The record shows that (lines 5-8, page 261).

"Miss Kluekhohn: Your Honor, the Government



moves that the case be re-opened and that I be permitted to question the defendant.

“The Court: It is granted. Proceed.”

---

### MARIO JOSEPH PACMAN

Recalled.

Whereupon defendant was recalled as a witness by the Government, having been previously duly sworn, was examined and upon direct examination testified as follows: That he appeared at a hearing before Commissioner David Head on October 23, 1942, before he was indicted and talked with him and told about his case and denied that at that time the Commissioner offered him conditionally the opportunity of going into the military service of a non-combatant nature and that defendant told him that he would not go; that the witness stated that the Commissioner asked what type of assurance he wanted and the witness replied that he did not know; that he said: (page 262, lines 13-15).

“Anything. I am willing to take an oath, qualified oath, to serve. All that I insisted that I couldn't swear to kill.” He denied the Commissioner told him he would take him down to the induction center and have him inducted in non-combatant service; that the Commissioner asked him the type of assurance he wanted and who he wanted [44] to assure him and he said he could not answer the question.

Defendant was called as a witness in his own behalf and upon direct examination by defendant's

(Testimony of Mario Joseph Pacman.)

counsel testified as follows: That he identified defendant's "Exhibit Q" for identification on the letterhead of the State of California, Director of Selective Service, dated September 22, 1942, and addressed to the witness and stated that he received said letter; that he relied upon the paragraph in said letter in connection with his contact with the Board, which read as follows: (page 266, lines 6-8).

"We are taking the liberty of forwarding your communication to Local Board No. 228, requesting that it be included in your file for their consideration."

Thereupon defendant's "Exhibit Q" for identification was received in evidence.

(Testimony of Mario Joseph Pacman.)

DEFENDANT'S EXHIBIT Q

[Printer's Note: Envelope attached to this Exhibit addressed to Mr. M. J. Pacman from Director of Selective Service, State of California, is not reproduced here.]

Culbert L. Olson

Governor

(Cut)

State of California

Director of Selective Service

Plaza Building, Sacramento

September 22, 1942

In replying refer  
to subject below:

Mr. M. J. Pacman

Box 135

Hollywood, California

Subject: Classification (7-12)

Dear Sir:

Your letter to Governor Olson under date of September 16th has been referred to this Headquarters for reply.

You no doubt realize that the Governor or this Headquarters has no authority to grant deferments as this power was conferred upon the individual local boards by congressional action.

It is noticed that your case has been considered by both the local and appeal board, and that you have apparently been classified in Class 1-A-O.

We are taking the liberty of forwarding your

(Testimony of Mario Joseph Pacman.)  
communication to Local Board No. 228, requesting  
that it be included in your file for their considera-  
tion.

Very truly yours,

K. H. LEITCH

K. H. Leitch

State Director of Selective  
Service

[Endorsed]: Filed 1/29/1943.

---

Witness was shown Government's "Exhibit 13"  
and his particular attention directed to the follow-  
ing phrase therein: (page 268, line 26; page 269,  
line 1).

"If I may, I will gladly appear before you to ex-  
plain further, or to be advised."

He was asked to explain the use of the words  
"Or be advised" and the reply thereto is set forth  
as follows: (p. 269, lines 9-17).

"This letter was written after I had received the  
last letter dated the 22nd. It stated they were send-  
ing my reasons over to the Draft Board for their  
consideration, and [45] *and* I thought possibly now  
they would give it consideration, so I asked them to  
give me the opportunity to explain the things that  
were definitely false, or to advise me because I had  
stated previously I would cooperate, if I would only  
get some justice; that was all I wanted, was right-  
eous justice."

Whereupon

DAVID HEAD

was called as a witness by the Government and upon direct examination testified as follows: That he is United States Commissioner in this court; that the defendant appeared before him October 23, 1942, for a preliminary examination; that Huntington Bledsoe was present representing the United States and there was no appearance for the defendant; that the defendant was present in person; that at the close of the hearing after defendant made his statement, there was a conversation in which the United States Commissioner, Mr. Bledsoe, and the defendant took part; and in answer to the question by the Court: "Is it not true you told him you would take him down and have him inducted?" the witness replied, "Yes, I told him that, in effect." That defendant told him he would not go and gave as his reason the nature of the oath.

Whereupon counsel presented their arguments to the jury.

In the course of argument by defense counsel, he stated, among other things:

"The especial charge is the intent of the defendant to violate an order which he considered to be valid and outstand- [46] *standing*. I ask you to be reminded the burden is not upon the defendant to convince you he acted innocently and with a good intent, but the burden is, on the contrary, upon the prosecution to demonstrate that he acted with a specific intent required of the law."

\* \* \* \* \*

“When there is a Selective Service Law and the nation is in emergency, we hate to kill, but we feel there is nothing that hurts our conscience in killing a German or a Japanese who threatens our liberties. . . That is how the normal human minds, most people’s minds function.

“I say to you that I understand, I can readily understand how very difficult it is for you normal people—that is why you are on the jury—to understand why this defendant took these strange and unusual and different positions which you and I never would think of taking. None of us pretend to be psychologists; perhaps it is a problem of psychology.

“This is a court of law and this man is charged with a crime. Perhaps somebody would find other reasons, other than I or you know, as to why he did these things. I think it is fair for me to ask you, as I go along, to try to judge this man, not by your own standards too much, for if you judge him by your own standards you may find him wanting; but to try to judge him by his own standards. You will agree with me in times of peace his standards are perfectly sound. Here is a man who attempted to apply some of the standards of [47] peace, which he applied for himself in his life, during wartime.”

\* \* \* \* \*

“He wanted then, I think, in good faith, to find a place for himself in the armed services and render his service in the armed forces subject, however, to the limitation which he insisted on, this limitation

to be that he be not required to shoulder and use a gun. This apparent change of his, which the Prosecutrix will insist upon, I assume, namely, lack of discontent with the 1-A-O and the desire for 4-E isn't a change but consistent with the intimations that appeared back in January."

\* \* \* \* \*

"And interestingly enough this is the important thing, you don't have here, at any time, until later on, a definite demand for a 4-E classification; always, he is willing to go in the Army. But always, I must confess, upon this limitation.

"Again I say this to you: I may, like you gentlemen of the jury may, take the harsh view, I think the ungenerous and unsympathetic view. What kind of man is this man? Who is he to bargain with the Government? What do we care about him when we are fighting a war, to let him write his own oath? You can take that kind of an attitude. Maybe I am making the argument that the Prosecutrix should make; I hope I am not making it too convincingly. This law recognizes the law [48] of an individual to conscience. And this land of ours recognizes the right of an individual to a conscience, and the whole basis of our Government, of the Bill of Rights, is that we don't care how fanatical or foolish this man's views may be, we will respect them up to the point where his views harm others."

\* \* \* \* \*

"You will recall Exhibit 8A, which contains the numerous applications by this defendant for various work. You recall his statement in that exhibit, to

the Board, a long time ago. The statement he repeated from the stand a half dozen times. There was no concern on his part for personal safety.”

\* \* \*

“\* \* \* It has been said that in the realm of real faith sharp differences arise. In both fields, that is, of real faith of political belief that tenets of one man may seem rankest error to his neighbor. Let’s assume the tenets of Mr. Pacman seem to you to be the rankest error. The special characteristics of the liberties guaranteed in the Bill of Rights, under their shield are that many types of opinions and beliefs can develop unmolested and unobstructed. \* \* \*”

\* \* \* \* \*

In the course of the closing argument of plaintiff’s attorney, among other things, she said the following:

“. . . Do you believe, in view of his education, in [49] view of the fact that he had read the regulations, in view of the fact he went down to the Board’s office and read over the complete file, and in view of the [50] conversation he had with the clerk wherein he was told he would have to report, it would be a violation of the law if he didn’t report, that in order to stay induction there would have to be an order from the State Director; do you believe in view of the fact he didn’t even care enough to call them and find out if they had a stay of induction—that wire that was sent to him was not a proper stay of induction, it was merely a wire of



statement of the Director—do you believe, in view of the fact he wouldn't submit himself, after he found out he had no other recourse and repeatedly refused to go into the Army in a 1-A-O classification, after he had violated the law first, and before he had been inducted, that this man is in good faith?

“Gentlemen, if you find, at the time this defendant attempted to appeal, that he knew the Board could not stay induction, that he must, nevertheless, report for induction or become delinquent under the law; that he did not receive a stay of induction himself, and he knew the Board had not received a stay of induction, and had made no effort to find out; in view of all this, and knowing all this, that this defendant still refused to obey the order of the Board; gentlemen, if you believe these facts, you must convict this defendant, [51] for he is as guilty of violating the law as he could possibly be. Otherwise, as I have stated to you, every registrant in the country can stall off induction, can stay induction by going through this farce of appealing, such as the defendant tried to do here, and not reporting for induction.

“Therefore, if he knew he should have reported, if he violated the law, and he knew he violated the law by not reporting—he had control of his senses at the time he should have reported and he could have reported if he desired, if he didn't receive a stay of induction and the Board didn't receive a stay of induction—you must convict the defendant of the offense with which he is charged.

“I ask you gentlemen to bring in a verdict worthy of a man of this calibre who is willing to let your sons and brothers and friends go out and give their lives for a country which gives him the constitutional guarantee of a fair and full trial in which he can hide behind the defenses he has interposed on his own behalf.

“Thank you.”

The defendant’s counsel, prior to said charge and to the argument of counsel, presented to the court and requested the court to give to the jury the following written instructions, which the court refused to give: [52]

Instructions Requested by Defendant:

\* \* \* \* \*

“If you find that there was not substantial evidence before the boards to sustain the finding that defendant should be classified as he was, you will find the defendant not guilty.

“By substantial evidence is meant a large quantum of evidence. It does not mean an absence of evidence and it means more than just a scintilla or some evidence. It means that there must be enough evidence before the boards so that a reasonable man in the same circumstances as presented in this case would come to the same conclusion as the boards did.

“If there was not enough of such evidence before the local or appeal board, you must acquit the defendant.”

“The denial of a full and fair hearing is the same

thing as the denial of any hearing. Therefore, if you find that although the defendant was granted a hearing, if that hearing was not a full and fair one but was merely perfunctory and not in accord with the ordinary rules of decency and fair play, or not in accord with the Rules and Regulations, you will find the defendant not guilty.”

\* \* \* \* \*

“Arbitrary power and the rule of the United States Constitution requiring the principle of fair play (legally known as “due process”) cannot both exist at the same time. [53] They are antagonist and incompatible forces. Of necessity arbitrary power must perish before the rule of the Constitution. There is no place in our constitutional system of government (and this includes the administration of the Selective Service System) for the exercise of arbitrary power.”

\* \* \* \* \*

“You are instructed that although under the Act, the decision as to what classification a particular registrant is to receive is left to the local board, this does not mean that a court of law does not have the power nor that you as a jury do not have the power to review a classification.

“This review is limited, however, to a determination by the jury of the facts, subject to the limitations to be indicated by the court in later instructions, that constitute arbitrariness or capriciousness, denial by the draft board of a fair hearing, or violation by the draft board of the provisions of

the Selective Training and Service Act, or the Rules and Regulations adopted pursuant to that Act.”

\* \* \* \* \*

“If you find that the local or appeal board disregarded the evidence presented on behalf of the defendant, you will find the defendant not guilty.”

\* \* \* \* \*

“You are instructed that Local and Appeal Boards under the Selective Service System must not act in an [54] arbitrary or capricious manner. Classifications by such boards must be based upon the evidence before them and that evidence alone.

“If you find that the local and appeal boards in this case acted in an arbitrary or capricious manner or disregarded the evidence that was before them or failed to give the registrant, defendant here, a full and fair hearing, you will acquit the defendant and find him not guilty.”

\* \* \* \* \*

“You are instructed that if a registrant has been advised by an agency of the Selective Training and Service System that his classification is being reviewed, and the registrant relies in good faith upon said representation, and in good faith believes that an order of a local draft board is stayed while said review is pending that any violation by said registrant, under the above circumstances, of any order of a local draft board is not willful.

“You are further instructed that if a registrant in good faith, because of reliance upon information which he in good faith believes, that an order of a local draft board has been stayed, and that he is

under no legal requirement to comply with such order, and said registrant, however, violates said order, that said violation is not willful.”

\* \* \* \* \*

“You are instructed that a registrant claiming classification as a conscientious objector under the Selective [55] Training and Service Act is entitled to be informed of evidence submitted against him, either to a local Draft Board, a hearing officer, or an appeals board in order that he may have an opportunity to meet such adverse evidence by submitting evidence in refutation thereof.

“You are further instructed that if evidence is submitted to a local draft board, to a hearing officer, or to a board of appeals in the Selective Training and Service System, which evidence is not submitted to the registrant and which evidence the registrant has no opportunity to answer, a classification of an order made by such agency or agencies by such Training and Service System violates due process of law and is unlawful.

Morgan v. United States 298 U.S. 468

Morgan v. United States 304 U.S. 1

“You are further instructed that a registrant is not required to obey an order of a local draft board if the order is unlawful.

Hopper v. United States, Ninth Circuit Court of Appeals, Dec. 18, 1942.”

\* \* \* \* \*

“You are instructed that, under the Rules and Regulations of the Selective Training and Service

Act, a registrant is entitled to a IV-E classification, if he has been found by reason of religious training and belief to be conscientiously opposed to war in any form and to be con- [56] scientiously opposed to both combatant and non-combatant military service, and every such registrant shall be available for general service in work of national importance under civilian direction when found to be acceptable for such service.

Rules and Regulations, Selective Training & Service Act, 622.51

“You are instructed that the Selective Training and Service Act provides that no person shall be required to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.

Selective Training and Service Act, Sec. 5:0.

“You are instructed that if a registrant has been advised by an agency of the Selective Training and Service System that his classification is being reviewed, and the registrant relies in good faith upon said representation, and in good faith believes that an order of a local draft board is stayed while said review is pending that any violation by said registrant, under the above circumstances, of any order of a local draft board is not felonious.

“You are further instructed that if a registrant in good faith because of reliance upon information

which he in good faith believes, that an order of a local draft board has been stayed, and that he is under no legal requirement [57] to comply with such order, and said registrant however violates said order, that said violation is not felonious.”

\* \* \* \* \*

“You are instructed that if a registrant has been advised by an agency of the Selective Training and Service System that his classification is being reviewed, and the registrant relies in good faith upon said representation, and in good faith believes that an order of a local draft board is stayed while said review is pending, that any violation by said registrant, under the above circumstances, of any order of a local draft board is not committed knowingly.

“You are further instructed that if a registrant in good faith, because of reliance upon information which he in good faith believes, that an order of a local draft board has been stayed, and that he is under no legal requirement to comply with such order, violates said order, he does not do so knowingly.”

\* \* \* \* \*

“You are further instructed more particularly that if the order of the local or appeal boards in classifying the defendant was made arbitrarily or capriciously, or was the result of passion or prejudice; or was made in disregard of the evidence presented to it, or if there was not substantial evidence to sustain the finding of the local board; or if the defendant was denied any hearing at all; or was denied [58] a full and fair hearing, the order of the

local or appeal board in ordering the defendant to report for induction into the armed forces was an illegal order since it was made as a result of the deprivation of the defendant of his right of due process of law.

“It is for the jury to determine the facts as to whether any of the above took place in the case of the defendant.

\* \* \* \* \*

“You are instructed that the defendant is charged with having feloniously failed to report for induction into the armed forces of the United States. You must therefore find the defendant not guilty if you find that he did not feloniously fail to report for induction; or if you find that there is a reasonable doubt as to whether the defendant feloniously failed to report, you will find the defendant not guilty.

The defendant excepted to Government’s Instruction 4, as modified by the court, given and read to the jury, for the reason that the same did not conform to the law. Said instruction reads as follows:

“You are instructed that the decision of the local board and the appeal board, with respect to the proper classification of the registrant, is final and conclusive. It is not within your province to determine whether the defendant was given a fair hearing before the Board, nor [59] whether or not the Board erred in classifying him.

“What you are required to determine, beyond a reasonable doubt, and it is your exclusive prov-



ince to determine, is whether or not the defendant after registering and receiving the order of the Board, knowingly failed to respond to the Board's order to report for induction. In determining this you may consider any matters other than those mentioned which might indicate to you the lack of intent on the part of the defendant to disregard the Board's order, such as, whether or not the notice to report was sent to the registrant and whether or not the registrant actually received or failed to receive it through no fault or neglect of his own, or in good faith believed the order of induction was suspended."

"Sec. 310a, Title 50, United States Code; U. S. v. Grieme and Sodlock, 128 F. (2d) 811-C. C. A. June 9, 1942; Whitney Bowles v. U. S., C. C. A. 3, Nov. 10, 1942."

The following instructions were given on behalf of the plaintiff:

You are instructed that the Selective Training and Service Act of 1940, among other things, required the registration of male citizens between the ages of 21 and 36, and pursuant thereto, the President called for the registration of these persons on October 16, 1940. The Act likewise provides that every male citizen in the United States between said ages shall be liable for training and service [60] in the land or naval forces of the United States, and authorized the President to select and induct into the Armed Forces of the United States for training and service, in the manner provided by the Act and under rules and regulations,

promulgated by the President under the Act, such number of men as in his judgment is required for the land or naval forces in the National interest.

You are instructed that under the Selective Training and Service Act of 1940 the President is authorized to prescribe rules and regulations for the administration of the Act and to create and establish local boards and appeal boards throughout the United States, consisting of civilians; and to appoint the members of these boards.

Section 10 of the Act provides, among other things, that the President is authorized:

“To create and establish a Selective Service System \* \* \* and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. And shall create one or more local boards in every county or political subdivision corresponding thereto of each state, territory, and the District of Columbia. Every local board shall consist of three or more members [61] to be appointed by the President from recommendations made by the respective governors or comparable executive officials.”

You are instructed that the decision of the Local Board and the Appeal Board, with respect to the proper classification of the registrant, is final and conclusive. It is not within your province to determine whether the defendant was given a fair hear-

ing before the Board, nor whether or not the Board erred in classifying him.

What you are required to determine, beyond a reasonable doubt, and it is your exclusive province to determine, is whether or not the defendant after registering and receiving the order of the Board, knowingly failed to respond to the Board's Order to Report for Induction. In determining this you may consider any matters other than those mentioned which might indicate to you the lack of intent on the part of the defendant to disregard the Board's order, such as whether or not the Notice to Report was sent to the registrant and whether or not the registrant actually received or failed to receive it through no fault or neglect of his own, or in good faith believed the order of induction was suspended.

You are instructed that this defendant had no right under the Act or the Selective Service Regulations to appeal to the President or to the State or National Director of Selective Service from the determination of the Board of Appeal and, therefore, no ten-day period for [62] appeal or stay of induction existed and the Local Board was not required to wait any period between the time the defendant was notified of his classification and the time the defendant was ordered to report for induction.

You are further instructed that any Order to Report for Induction issued by Local Board No. 228 after the defendant was notified of the Appeal Board's determination, that is, that he had been

retained in Classification 1-A-O, is effective and valid and must be obeyed by the registrant unless the registrant, the defendant, in good faith believed the order of induction was suspended and therefore not effective.

You are instructed that if, at the time defendant attempted to appeal to the President through the State Director of Selective Service, he knew that Local Board No. 228 could not stay his induction unless the State Director of Selective Service ordered the Board to do so, that he must report for induction in accordance with the Order to Report previously mailed to defendant or become delinquent with said Board, and further, that no stay of induction had been received by Local Board No. 228 from the State Director of Selective Service, and that defendant did not report at the time and place so ordered, then you must find that the defendant knowingly failed and neglected to appear in accordance with said Order, unless the registrant, the defendant, in good faith believed the order of induction was suspended and therefore not effective. [63]

The defendant excepted to Government's Instruction 6, as modified and given and read to the jury for the reason that the same did not conform to law. Said instruction reads as follows:

"You are instructed that this defendant had no right under the Act or Selective Service Regulations to appeal to the President or to the State or National Director of Selective Service for the determination of the Board of Appeals and therefore

no ten-day period for appeal or stay of execution existed and the local board was not required to wait any period between the time the defendant was notified of his classification and the time the defendant was ordered to report for induction.

“You are further instructed that any order to report for induction issued by local board 228, after the defendant was notified of the appeal board’s determination; that is, that he had been retained in classification 1-A-O, is effective and valid and must be obeyed by the registrant, unless the registrant, the defendant, in good faith believed the order of induction was suspended and therefore not effective.”

The jury returned a verdict of guilty on January 29, 1943, and on February 1, 1943, the court ordered the defendant sentenced to penitentiary for two years. Notice of appeal was filed February 5, 1943.

Forasmuch as the matters above set forth do not fully [64] appear in the record, defendant tenders this, his Bill of Exceptions, and prays that the same may be signed and approved by the Judge of this Court.

Dated as Los Angeles, California, June 29, 1943.

DAVID R. RUBIN,

LELAND S. BOWER.

By: LELAND S. BOWER,

Attorneys for Appellant.

The foregoing Bill of Exceptions was filed on the 30 day of July, 1943, within the time allowed for the filing of the Bill of Exceptions by order of the District Court for the Southern District

of California, Central Division, and by extension of the United States Circuit Court of Appeals. Said bill contains all the material evidence given and proceedings had upon the trial of this action, and, in all respects is correct, and is hereby approved, allowed, and settled and made a part of the record herein; provided that remarks of the Court at time of passing of sentence are attached and made a part hereof, on Feb. 1, 1943.

Dated: Los Angeles, California this 30 day of July 1943.

J. F. T. O'CONNOR,

United States District Judge  
for the Southern District of  
California, Central Division

Service of a copy of the above Bill of Exceptions acknowledged this 29th day of June, 1943.

CHARLES H. CARR,

United States Attorney.

By: JAMES M. CARTER,

Assistant U. S. Attorney, At-  
torneys for Plaintiff and  
Appellee. [65]

---

Los Angeles, California,

February 1, 1943,

10:30 A. M.

The Clerk: No. 15789 Criminal, United States of America versus Mario Joseph Pacman for sentence.

The Court: Mario Joseph Pacman, this is the

time set for the passing of sentence upon you under the verdict of guilty found by the jury. The Court will ask you if you have anything to say why the judgment of the Court should not now be pronounced against you.

Mr. Wirin: The defendant has a statement to make, your Honor, and then I would like to supplement his remarks.

The Court: All right.

The Defendant: I am sorry I misunderstood the justice under military authority. I can yet do conscientious, risky military service, military work in any dangerous area. If not needed there I am needed and wanted on a poultry and egg farm or washing bottles on a dairy farm. With God's grace I will bear any other sentence you have to make.

Mr. Wirin: May I state to the Court I have two letters, one from the J. Hartley Taylor Rummymede Farms offering the defendant a job at the rate of \$55.00 a month and board to work in the cleaning gang on this farm. The second letter is from David Lowe Breeding Farm, breeder of chickens, and which offers the defendant a job in connection with the production and raising of baby chicks.

The Court: The letters will be filed.

Mr. Wirin: May I say in addition that I think we all understand, and it goes without saying if your Honor would find it appropriate to suspend such sentence as your Honor has in mind on the condition of his going to a conscientious objectors' camp, there would be no question about the defendant's entire willingness to go to such a camp. The

reason, your Honor, I have submitted these offers of employment is because of my own belief, which I urge upon the Court, if some formula could be discovered whereby this defendant could be doing something useful, it would be a much wiser solution of the problem or problems incident of the defendant's failure to comply with the order of induction.

The Court: An indictment was returned by the Grand Jury on January 13, 1943, against Mario Joseph Pacman, and the indictment alleges the violation of an order of the Local Board No. 228, which board had been established under the Selective Service Act of 1940. The particular violation being the refusal and failure of the defendant, Mario Joseph Pacman, to report for induction into the armed forces of the United States on September 14, 1942. The defendant interposed a plea of not guilty and was tried by a jury, the trial lasting two days and a half. And on the 29th of January, 1943, the jury returned a verdict of guilty.

The evidence established that on October 16, 1940, the defendant registered under the Selective Training and Service Act of 1940, and that on December 26, 1940, returned and filed his questionnaire in which he claimed a conscientious objection to combatant military service, but not to military service of a non-combatant nature. The defendant has no dependents. At the time the defendant stated he doubted his ability to withstand physical training, but with a few months of notice, as he stated, he could liquidate, and he thought he was a good driver, a good seller, economist and a better buyer.



On January 6, 1941, the defendant was classified by his Local Board No. 228 in classification 1-B, and thereafter on July 8, 1941, the defendant was reclassified by said board in the classification 1-A, and later on September 25, 1941, he was placed in classification 1-H, as being over the age of thirty-eight. On January 15, 1942, the defendant was called for a physical examination, and thereafter, on January 28, 1942, approximately thirteen months after his Selective Service questionnaire was filed, he filed with the local board his conscientious objector's claim. Conscientious objection to combatant military service on the ground he was a devout Catholic and his Catholic training did not allow him to participate in combatant military service. However, he did not claim exemption from non-combatant military service. The defendant further set forth therein he was a member of the California State Guard at Bishop, which he joined on December 21, 1941, and that was approximately a year after his Selective Service questionnaire had been filed.

On March 13, 1942, the defendant was classified in classification 1-A. However, upon receiving said 1-A classification the defendant requested a hearing before the Local Board No. 228 and it was granted, and on March 24, 1942, the defendant was classified in classification 1-AO, making him available for military service of a non-combatant nature, which classification the defendant had requested.

My recollection of the testimony is, further, that on March 24, 1942, at which time the defendant was

classified in 1-AO, he expressed a desire and willingness to participate in military service of a non-combatant nature. However, thereafter the defendant claimed he should be given a 4-E classification, exempt from both combatant and non-combatant military service. On April 15, 1942, the defendant requested a reclassification from 1-AO to classification 4-E, which request was denied by Local Board 228.

Thereafter, on April 18, 1942, the defendant appealed by letter, to Appeal Board No. 17, requesting a 4-E classification. The record further shows that the defendant's time for appeal had expired, but, notwithstanding the *elapse* of time, the local board permitted the appeal to be made and sent the record to the appeal board.

The record shows on April 30, 1942, Appeal Board No. 17, Group A, determined that the defendant was not to be classified in classification—1-C or 3-T or 1-H. The matter was then placed in the hands of the hearing officer. July 16, 1942, a hearing was had in which the defendant personally appeared. The hearing officer recommended a continuance of classification 1-AO on the ground he did not feel, after considering the evidence, evidently, there was any basis for the defendant being classified as a conscientious objector. Then pursuant to the recommendation, I believe the evidence shows, Appeal Board 17 retained the defendant in classification 1-AO on August 20, 1942.

On August 31, 1942, the defendant was notified by Local Board No. 228 of his retention in classifica-

tion 1-AO. That on or about September 3, 1942, Local Board No. 228 mailed the defendant, to his last known address, an order to report for induction into the armed forces of the United States, directing him to report to the said board on September 14, 1942.

There is no question but that the defendant received this notice, as he stated on the stand and also in telegrams he subsequently sent. The evidence further shows he appeared at the board, after receiving the notice, and he was advised there was nothing more the board could do about his delaying further his induction, and, according to the clerk of the board, he said he did not intend to report for induction. After receiving this notice for induction the defendant then wrote to the State Director of Selective Service requesting an appeal from his 1-AO classification to either classification 2-A or 4-E, and also for a Presidential review. And thereafter the State Director of Selective Service advised the defendant he was retained in his classification, and did not believe that further action could be warranted.

There is no question but the defendant did not report for induction, as required by the Board. His failure to report for induction caused a notice of suspected delinquency, which was prepared by the board and sent to the defendant. Some days later, about September 19th, which was five days after his induction order expired, the defendant appeared at the office of the local board and informed the clerk

he did not report for induction and did not intend to appear.

Now, the defendant's defense was that, in view of the fact he had telegraphed to the State Director and also to the National Director and that the State Director stated he would examine whatever information he had, and he did send, according to the evidence, information to the State Director and to the National Director, that it was his belief he had stayed the order of induction.

The Court is of the opinion that that evidence was not admissible. In other words, whatever this defendant did after he had defaulted in his induction and after being advised by the local board's secretary he would have to appear for induction on that day, notwithstanding the telegraphic requests he had made of these other officials and also that he had no procedural right, as a matter of right, to appeal, but to merely make a request, that because of those facts the defendant, as part of his defense, alleged he did not willfully or knowingly or feloniously violate the order of induction.

Now, as I say, I don't believe that that was proper evidence. In other words, to show what this defendant did after the offense against the laws of the country, after they had been completed, but, notwithstanding that, upon insistence of counsel, who very ably defended the defendant, I permitted all of that evidence to go before the jury, so as to give the defendant every opportunity to present all of his case. The only evidence I did not permit to go before the jury that was offered and considered im-

portant by counsel was to open up the entire proceedings before the board to determine whether or not they acted arbitrarily and without justification in placing the defendant in the classification of 1-AO, to which the defendant properly made his objection and an exception was allowed by the Court. I believe in all of these matters we should be very careful of the rights of the defendants, give them every opportunity to place before the jury their defense, if it is a defense. As I say again, I permitted evidence I am convinced should not have been permitted on the part of the defendant.

The other defense was that on account of the defendant's religious scruples, the defendant alleged as a Catholic he could not conscientiously engage in combatant service. However, there was no evidence of any kind presented there was any such requirement in the religious tenets to which he subscribed. Different from most of the cases the court has heard, known as Jehovah Witnesses, in those cases it is the teaching and precept of the organization, which is an established and recognized religious organization, that one of the tenets that they preach is not to engage in combatant service which would mean the taking of life, and all of the evidence sustains the fact the organization teaches that. The Government of the United States has recognized the claims of conscientious objectors, which is a wise provision of the law under our Constitution, which made such an effort to preserve the teachings and beliefs of any class of people. I believe in all the cases that have been called to my attention that

the members of the Jehovah Witnesses, who have made those claims, have been sustained and given a conscientious objector's rating and have been permitted to go to conscientious objectors' camps. It is not for the court to inquire at all into the attitude of those individuals, the fact they might see things differently than the average man, the fact that other young men go out to fight and die in order that these men may have the right not to fight is a matter that is recognized by the Government in the law.

The particular defense in this case, emphasized by the defendant, was that he was opposed to killing. Local Board No. 228 recognized that claim on the part of this defendant and placed this defendant in 1-AO, and that classification places the defendant in a position where he will never have to kill, never have to carry a gun, never have to engage in active military combat. That classification means that the defendant, in the armed forces of the United States, would be assigned to non-combatant service of which there is a wide field. The quartermaster department of the United States is a good example of this, the large number of men that are employed in stenographic services in the armed forces in this country, the warehouses assembling and forwarding the tremendous supplies of munitions and arms, food supplies to our boys who are fighting to save democracy in the foreign countries. In that classification this defendant was placed. In answer to his counsel as to why he did not enter that service he said he had heard from

some source that some time or some place a man classified as that had been compelled to do combatant service. Also the defendant stated that if he could be given assurances he would not have to kill or be engaged in combatant service he would have entered the non-combatant service; all of that testimony was given to the jury.

I do not believe it is for an individual to question the good faith of the officers of the Government and to assume they are going to violate the statute, and when a man is placed in a non-combatant service they are going to violate their oath that they take as officers and place a man in a combatant service after he has been placed in a non-combatant service group.

Evidence further shows that the defendant was a member of the California National Guard. There was no evidence introduced as to the oath taken, although the defendant stated he felt the oath taken by those who are members of the National Guard of California was practically the same as the oath required, which he had examined, to become a member of the armed non-combatant service in the United States. I rather assumed that was correct. In justification then of having taken such an oath and declining to take the second oath, the defendant stated he believed that the State Guard was merely a police instrumentality of the State and would not at any time be required to engage in active combat, and that while he attended the meetings and learned the manual and drill, as soon as the guns were presented he absented himself and took the option

which was given to all members of the Guard, to voluntarily resign.

The testimony shows the defendant also made application to join the Federal Bureau of Investigation, and freely admitted it would be necessary to carry a gun. The defendant also stated that he understood that to be for defensive purposes.

I have summarized the facts in some detail because there is nothing more important in our courts at the present time than, first, the enforcement of the Selective Service Act and at the same time not to violate any of its provisions and to be sure that every defendant has his rights protected under that Act. This is an unusual case in view of the fact the defendant is much above the average in intelligence; his testimony and his correspondence and letters show that. Secondly, that every possible avenue of escape from the non-combatant service of the United States, the record shows, has been taken advantage of by this defendant.

It is the judgment of this Court the defendant be sentenced to a period of two years in the penitentiary.



Approved:

CHARLES H. CARR,  
United States Attorney,

By: JAMES M. CARTER,  
Assistant United States At-  
torney for Plaintiff and Ap-  
pellee.

DAVID R. RUBIN and  
LELAND S. BOWER,  
By: LELAND S. BOWER,  
Attorneys for Defendant and  
Appellant.

[Endorsed]: Filed July 31, 1943.

---

[Title of District Court and Cause.]

#### ASSIGNMENT OF ERRORS

Comes now Mario Joseph Pacman, in connection with his notice filed with the Clerk of the above entitled Court, stating that said defendant appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence rendered in the above entitled cause against him on the 1st day of February, 1943, and said defendant having duly given notice of appeal as provided by law, said defendant and appellant now makes and files with his Notice of Appeal, the following Assignment of Errors herein upon which he will apply for a reversal of said judgment and sentence, and which errors and each of them are to the great detriment,

prejudice and injury of said defendant and in violation of the rights conferred upon him by law; and said defendant says that in the record and proceedings in the above cause upon the hearing and determination thereof in the Central Division of the United States District Court for the Southern District of California there is manifest error in this, to-wit:

1. Said District Court erred in entering judgment against, and in pronouncing sentence upon, the appellant, in that the evidence was insufficient to support the verdict of guilty for the reason that no criminal intent was proven.

2. Said District Court erred in refusing to admit in evidence defendant's Exhibit "B", in that the same has a direct and material bearing on the existence of criminal intent.

3. Said District Court erred in refusing to admit in evidence defendant's Exhibit "C", in that the same has a direct and material bearing on the existence of criminal intent.

4. Said District Court erred in refusing to admit in evidence defendant's Exhibit "D", in that the same has a direct and material bearing on the existence of criminal intent.

5. Said District Court erred in sustaining the objections of the plaintiff to receiving Exhibit "E" in evidence, in that the same has a direct and material bearing on the existence of criminal intent.

6. Said District Court erred in sustaining the objections to the offer of defendant's Exhibit "G"

in evidence, in that the same has a direct and material bearing on the existence of criminal intent.

7. Said District Court erred in sustaining the objection to the offer of defendant's Exhibit "K" in evidence, in that the same has a direct and material bearing on the existence of criminal intent.

8. Said District Court erred in sustaining the objections to the offer of defendant's Exhibit "L" in evidence, in that the same has a direct and material bearing on the existence of criminal intent.

9. Said District Court erred in sustaining the objections to the offer of defendant's Exhibits "N" and "O" in evidence, (offered together) in that the same has a direct and material bearing on the existence of criminal intent.

10. Said District Court erred in sustaining the objections to the introduction in evidence of defendant's Exhibit "P", in that same has a direct and material bearing on the existence of criminal intent.

11. Said District Court erred in granting plaintiff's motion to strike out defendant's answer when the defendant was asked what reason, if any, he had for not reporting on the 14th day of September, 1942, to-wit, (Page 190, lines 3-11 of Transcript): "I didn't report because I definitely felt that that particular induction order was being reviewed, or my classification was being reviewed and that I, the wire the court won't permit, and the other is the wire from Colonel Leitch. I wouldn't have refused to obey this induction order. It didn't tell me I would have to kill. I still had an alternative if

these people would not give me justice or consideration, I could go there." The answer was material and properly admissible on the issue of criminal intent.

12. Said District Court erred in making certain comments in the course of the trial which, while done without any intention of being unfair to the defendant, (counsel have too high a regard for the Judge who sat in this case to even dream of accusing him of intentional unfairness or bias in any case at any time), resulted in the failure of the defendant to have a fair trial, and which comments and conduct of the court were prejudicial to the rights of the defendant, in that they show the impatience of the court with defendant's case and must have had some influence on the jury and its verdict. Among said comments are the following:

(a) The defendant's counsel asked the defendant the following question: (Page 193, lines 15-19 of Transcript): "Did you, prior to the time of being prosecuted, make any attempt to get into any branch of the United States Army, under military supervision, where there would be danger to you, but would be such you would not have to kill?"

An objection to said question was sustained with the following comment by the court, "I have listened enough to your arguments."

(b) Again when defendant's counsel inquired of the court (Page 196, lines 4-5 of Transcript): "Will Your Honor permit me a short recess so that I may get my papers in order?", the court re-

sponded, "I am trying to get through. I will have to ask you to proceed."

(c) Again on page 244 of the Transcript, lines 1-2, appears the following:

"The Court: 'I am going to finish this case tonight. I have spent two whole days on it.'"

(d) Again, when counsel for defendant moved to reopen the case to ask the defendant several questions, in granting the motion, the court said: (Page 259, lines 9-11 of Transcript).

"The Court: 'It is a matter entirely in the discretion of the court. I am three days on a case that should have taken one. I will permit it.'"

(e) Said conduct of the court is in sharp contrast with the court's attitude towards the Government's counsel. The record shows (Page 261, lines 5-8 of Transcript) as follows:

"Miss Kluckhohn: 'Your Honor, the Government moves that the case be reopened and that I be permitted to question the defendant.'

"The Court: 'It is granted. Proceed!'"

13. Said District Court erred in sustaining an objection to the following question asked by defendant's counsel: (Page 193, lines 25-26 of Transcript) "Would you be willing now to accept service in the military service or signal corps where you would be assured you would not have to kill?", in that the same had a direct and material bearing on the existence of criminal intent.

14. Said District Court erred in that when the defendant testified that he would have gone on a food ship, although he knew it was dangerous to do

so, adding: (Page 229, lines 5-6 of Transcript), "Who is talking about danger? I am talking about conscience," the court ordered the same stricken on plaintiff's motion, in that said testimony had a direct and material bearing on the existence of criminal intent.

15. Said District Court erred in that the documents which had been marked for identification and offered in evidence, but which were not allowed to be introduced in evidence, being the documents referred to in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 hereof, were properly admissible in support of defendant's claim that he was deprived of due process of law in that the hearing of his case by the Selective Training and Service Act Boards and Authorities was conducted in an arbitrary, unfair, capricious, unreasonable, and prejudicial manner, and in that the requirements of Section 5 (g) of the Selective Training and Service Act of 1940 and paragraph 375, Section XXVII, Volume Three of the Selective Service Regulations were not complied with.

16. Said District Court erred further in excluding testimony by the defendant concerning the nature of the hearing before the Hearing Officer of the Department of Justice, and also evidence tending to prove that in said hearing the defendant was not given the opportunity to show the falsity of the evidence offered against him or the chance to refute the same, since thereby he was denied and deprived of due process of law.

17. Said District Court erred in excluding the

testimony of the defendant with respect to the hearing conducted by and evidence taken before the Local Draft Board, and the evidence of the defendant that said Board relied upon incorrect and even false information prejudicial to the defendant, the nature of which was not communicated to the defendant, and erred further in excluding testimony to show that the defendant was not afforded opportunity to reply to the same, said error consisting of this, namely, that said evidence was proper to be considered in determining the issue of the defendant's guilt particularly on the issue of criminal intent.

18. There is further error in the record of the District Court in the prejudicial remarks of the plaintiff's counsel, and particularly in the closing paragraphs set forth in the Bill of Exceptions, especially the last sentence, as follows:

“I ask you gentlemen to bring a verdict worthy of a man of this calibre who is willing to let your sons and brothers and friends go out and give their lives for a country which gives him the constitutional guarantee of a fair and full trial in which he can hide behind the defenses he has interposed on his own behalf.”

With the country at war and some of the members of the jury probably having sons or brothers and certainly friends in the armed forces of our country and some of them probably on active fronts in distant lands, this language was intended and calculated to arouse the emotions, passions, prejudices, indignation and resentment of the members of the

jury and undoubtedly did have this effect and was therefore prejudicial to the legal rights of the defendant since it resulted in his not having a fair trial and his being denied and deprived of due process of law.

19. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“If you find that there was not substantial evidence before the boards to sustain the finding that defendant should be classified as he was, you will find the defendant not guilty.

“By substantial evidence is meant a large quantum of evidence. It does not mean an absence of evidence and it means more than just a scintilla or some evidence. It means that there must be enough evidence before the boards so that a reasonable man in the same circumstances as presented in this case would come to the same conclusion as the boards did.

“If there was not enough of such evidence before the local or appeal board, you must acquit the defendant.”

20. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“The denial of a full and fair hearing is the same thing as the denial of any hearing. Therefore, if you find that although the defendant was granted a hearing, if that hearing was not a full and fair one but was merely perfunctory and not in accord with the ordinary rules of decency and fair play, or not



in accord with the Rules and Regulations, you will find the defendant not guilty.”

21. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“Arbitrary power and the rule of the United States Constitution requiring the principle of fair play (legally known as “due process”) cannot both exist at the same time. They are antagonistic and incompatible forces. Of necessity arbitrary power must perish before the rule of the Constitution. There is no place in our constitutional system of government (and this includes the administration of the Selective Service System) for the exercise of arbitrary power.”

22. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that although under the Act, the decision as to what classification a particular registrant is to receive is left to the local board, this does not mean that a court of law does not have the power nor that you as a jury do not have the power to review a classification.

“This review is limited, however, to a determination by the jury of the facts, subject to the limitations to be indicated by the Court in later instructions, that constitute arbitrariness or capriciousness, denial by the draft board of the provisions of the Selective Training and Service Act, or the Rules and Regulations adopted pursuant to that Act.”

23. Said District Court erred in refusing to give

to the jury the following instruction, requested by the defendant:

“If you find that the local or appeal board disregarded the evidence presented on behalf of the defendant, you will find the defendant not guilty.”

24. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that Local and Appeal Boards under the Selective Service System must not act in an arbitrary or capricious manner. Classifications by such boards must be based upon the evidence before them and that evidence alone.

“If you find that the local and appeal boards in this case acted in an arbitrary or capricious manner or disregarded the evidence that was before them or failed to give the registrant, defendant here, a full and fair hearing, you will acquit the defendant and find him not guilty.”

25. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that if a registrant has been advised by an agency of the selective Training and Service System that his classification is being reviewed, and the registrant relies in good faith upon said representation, and in good faith believes that an order of a local draft board is stayed while said review is pending that any violation by said registrant, under the above circumstances, of any order of a local draft board is not committed knowingly.

“You are further instructed that if a registrant

in good faith, because of reliance upon information which he in good faith believes, that an order of a local draft board has been stayed, and that he is under no legal requirement to comply with such order, violates said order, he does not do so knowingly.”

26. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that a registrant claiming classification as a conscientious objector under the Selective Training and Service Act is entitled to be informed of evidence submitted against him, either to a local Draft Board, a hearing officer, or an appeals board in order that he may have an opportunity to meet such adverse evidence by submitting evidence in refutation thereof.

“You are further instructed that if evidence is submitted to a local draft board, to a hearing officer, or to a board of appeals in the Selective Training and Service System, which evidence is not submitted to the registrant and which evidence, the registrant has no opportunity to answer, a classification or an order made by such agency or agencies of such Training and Service System violates due process of law and is unlawful.

*Morgan v. United States*, 298 U.S. 468

*Morgan v. United States*, 304 U.S. 1

“You are further instructed that a registrant is not required to obey an order of a local draft board if the order is unlawful.

Hopper v. United States, Ninth Circuit Court of Appeals, Dec. 18, 1942.

27. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that, under the Rules and Regulations of the Selective Training and Service Act, a registrant is entitled to a IV-E classification, if he has been found by reason of religious training and belief to be conscientiously opposed to war in any form and to be conscientiously opposed to both combatant and non-combatant military service, and every such registrant shall be available for general service in work of national importance under civilian direction when found to be acceptable for such service.

Rules and Regulations, Selective Training and Service Act, 622.51

“You are instructed that the Selective Training and Service Act provides that no person shall be required to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.

Selective Training and Service Act, Sec. 5:0.

28. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that if a registrant has been advised by an agency of the Selective Training and

Service System that his classification is being reviewed, and the registrant relies in good faith upon said representation and in good faith believes that an order of a local draft board is stayed while said review is pending that any violation by said registrant, under the above circumstances, of any order of a local draft board is not felonious.

“You are further instructed that if a registrant in good faith because of reliance upon information which he in good faith believes, that an order of a local draft board has been stayed, and that he is under no legal requirement to comply with such order, and said registrant however violates said order, that said violation is not felonious.”

29. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that if a registrant has been advised by an agency of the Selective Training and Service System that his classification is being reviewed, and the registrant relies in good faith upon said representation, and in good faith believes that an order of a local draft board is stayed while said review is pending, that any violation by said registrant, under the above circumstances, of any order of a local draft board is not wilful.

“You are further instructed that if a registrant in good faith, because of reliance upon information which he in good faith believes, that an order of a local draft board has been stayed, and that he is under no legal requirement to comply with such order, and said registrant however violates said order, that said violation is not wilful.”

30. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are further instructed more particularly that if the order of the local or appeal boards in classifying the defendant was made arbitrarily or capriciously, or was the result of passion or prejudice; or was made in disregard of the evidence presented to it, or if there was not substantial evidence to sustain the finding of the local board; or if the defendant was denied any hearing at all; or was denied a full and fair hearing, the order of the local or appeal board in ordering the defendant to report for induction into the armed forces was an illegal order since it was made as a result of the deprivation of the defendant of his right of due process of law.

“It is for the jury to determine the facts as to whether any of the above took place in the case of the defendant.

31. Said District Court erred in refusing to give to the jury the following instruction, requested by the defendant:

“You are instructed that the defendant is charged with having feloniously failed to report for induction into the armed forces of the United States. You must therefore find the defendant not guilty if you find that he did not feloniously fail to report for induction; or if you find that there is a reasonable doubt as to whether the defendant feloniously failed to report you will find the defendant not guilty.

32. Said District Court erred in giving and reading to the jury Government's instruction Number IV after modification by the Court, for the reason that the same even as modified did not conform to the law. The defendant excepted to the same. Said instruction reads as follows:

"You are instructed that the decision of the local board and the appeal board, with respect to the proper classification of the registrant, is final and conclusive. It is not within your province to determine whether the defendant was getting a fair hearing before the Board, nor whether or not the Board erred in classifying him.

"What you are now to determine, beyond a reasonable doubt, and it is your exclusive province to determine, is whether or not the defendant after registering and receiving the order of the Board, knowingly failed to respond to the Board's order to report for induction. In determining this you may consider any matters other than those mentioned which might indicate to you the lack of intent on the part of the defendant to disregard the Board's order, such as, whether or not the notice to report was sent to the registrant and whether or not the registrant actually received or failed to receive it through no fault or neglect of his own, or in good faith believed the order of induction was suspended."

33. The District Court erred in giving and reading to the jury Government's instruction VI, as modified, for the reason that the same, even as modified, did not conform to the law. The defendant

excepted to the same. Said instruction reads as follows:

“You are instructed that this defendant had no right under the Act or Selective Service Regulations to appeal to the President or to the State or National Director of Selective Service for the determination of the Board of Appeals and therefore no 10-day period for appeal or stay of execution existed and the local board was not required to wait any period between the time the defendant was notified of his classification and the time the defendant was ordered to report for induction.

“You are further instructed that any order to report for induction issued by local board 228, after the defendant was notified of the appeal board’s determination; that is, that he had been retained in classification 1-A-O, is effective and valid and must be obeyed by the registrant, unless the registrant, the defendant, in good faith believed the order of induction was suspended and therefore not effective.”

35. The District Court erred in entering judgment upon the verdict and imposing sentence on the defendant because the record shows that the induction order was issued prior to the expiration of ten days after the defendant’s classification, contrary to the provisions of the Selective Training and Service Act of 1940 and the amendments thereto. Mrs. Sniff, the chief clerk of the local board testified on direct examination (Page 42, lines 15-18 of Transcript) as follows:

“Q. Now, was the defendant notified of the Appeal Board’s action?



A. Yes, he was, on August 31st he was mailed a D.S.S. Form 58.”

On Sept. 3, 1942, a D.S.S. Form 150 to report for induction on Sept. 14, 1942 was mailed to defendant. (P. 9, Bill of Exceptions).

CONCLUSION:

Wherefore, the defendant prays that by reason of the errors aforesaid, the judgment and sentence imposed upon him be reversed and held for naught.

LELAND S. BOWER,  
DAVID R. RUBIN,  
By DAVID R. RUBIN,  
Attorneys for Defendant and  
Appellant.

Received copy July 2, 1942.

MILDRED L. KLUCKHOHN.

[Endorsed]: Filed July 2, 1943.

---

[Endorsed]: No. 10362. United States Circuit Court of Appeals for the Ninth Circuit. Mario Joseph Pacman, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed August 16, 1943.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10362

MARIO JOSEPH PACMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER THAT CERTAIN EXHIBITS NEED  
NOT BE PRINTED

It appearing that appellant has designated the entire transcript of record as necessary for consideration of the points relied upon, and that all exhibits which are capable of economical reproduction are being included within the printed transcript of record, and good cause therefor appearing,

It Is Ordered that Government's Exhibits 1, 2 and 3, and Defendant's Exhibit B for identification need not be printed, but may be considered by this Court in their original form.

CURTIS D. WILBUR,

Senior United States Circuit  
Judge.

Dated: San Francisco, Calif., February 8, 1944.

[Endorsed]: Filed Feb. 8, 1944. Paul P.  
O'Brien, Clerk.